



**The Planning  
Inspectorate**

## **The Planning Act 2008**

### **The North Blyth Biomass Power Station Order**

#### **Examining Authority's Report to the Secretary of State**

**Robert Upton**

CBE

**Examining Authority's Report in respect of an application for a Development Consent Order for the construction of a power generating station of 99.9MW capacity, fuelled by biomass, an outfall for cooling water and a connection to the grid at an existing substation.**

**Date: 2 May 2013**

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**File Ref EN010016**

**The North Blyth Biomass Power Station Order**

- The application, dated 14 March 2012 was made under Section 37 of the Planning Act 2008 (as amended) (PA2008)
- The applicant is North Blyth Energy Ltd, a subsidiary of RES
- The application was accepted for examination on 11 April 2012.
- The examination of the application began on 3 August 2012 and was completed on 2 February 2013.
- The development proposed is the construction of a power generating station of 99.9MW capacity, fuelled by biomass, an outfall for cooling water and a connection to the grid at an existing substation

**Summary of Recommendation: The ExA recommends that the Secretary of State should make the Order in the form attached.**

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# The Planning Inspectorate

ERRATA SHEET – North Blyth Biomass Power Station – Ref. EN010016

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change, dated 2 May 2013.

Corrections agreed by the Examining authority prior to a Decision being made

Page No.	Paragraph	Error	Correction	Reason
64	6.90	Reference to "This second s.106 agreement in its draft form is at AS12."	Quoted text to be replaced with "This second s.106 agreement is at AS12."	The second s.106 agreement was completed on 1 February 2013, which was prior to the conclusion of the examination on 2 February 2013.
64	6.91	Reference to "; but if the applicant for whatever reason has failed to submit the concluded version to the Secretary of State that would not be sufficient reason by itself to withhold development consent."	Quoted text to be omitted.	The second s106 agreement was completed on 1 February 2013, which was prior to the conclusion of the examination on 2 February 2013.

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## 1 INTRODUCTION

- 1.1 On 15 June 2012 the Secretary of State for Communities and Local Government appointed Robert Upton CBE as the Examining Authority (ExA) to examine the application.
- 1.2 This document sets out in accordance with s.83(1) of the Planning Act 2008 (PA2008) the ExA's report of findings and conclusions and the recommendation as to the decision to be made on the application.
- 1.3 The proposed development for which consent is required under s.31 of PA2008 is a generating station with a design capacity of 99.9 Megawatts. It is thus a nationally significant infrastructure project by virtue of s.15(2) of PA2008.
- 1.4 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. The application included an Environmental Statement (ES) which the ExA considers meets the definition in Regulation 2(1) of those regulations<sup>1</sup>. All the environmental information provided in the application and during the examination has been considered by the ExA in making the recommendation.

### *Preliminary meeting*

- 1.5 A preliminary meeting was held on 2 August 2012 at which the applicant and other Interested Parties (IP) were able to make representations to the ExA as to how the application should be examined. The ExA's procedural decisions under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 were issued on 15 August 2012. These were subsequently modified under Rule (8)3 on 21 September 2012.
- 1.6 The ExA sought answers to written questions on 15 August 2012 and 2 November 2012, and issued further requests for information under Rule 17 on 25 October 2012, 17 December 2012 and 3 January 2013.

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<sup>1</sup> "environmental statement" means a statement—  
(a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and of any associated development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but  
(b) that includes at least the information referred to in Part 2 of Schedule 4;

*Site visits*

- 1.7 The ExA made an inspection of the site of the proposed development and other relevant sites accompanied by interested parties on 6 December 2012.

*Schedule of hearings*

- 1.8 The examination included a hearing on compulsory acquisition requested by an affected party, and open floor hearings requested by interested parties<sup>2</sup>. The ExA also decided that it was necessary to hold a number of Specific Issue hearings. These are set out in Appendix A.

*Other consents required*

- 1.9 In addition to the consent required under PA2008, the proposed development is subject to the need for the consents and permits set out in Appendix B.

*Other legislative provisions*

- 1.10 In accordance with duties under the Natural Environment and Rural Communities (NERC) Act 2006 and the United Nations Environment Programme Convention on Biological Diversity 1992, the ExA has had regard to the purpose of conserving biodiversity as required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010.
- 1.11 The ExA has also had regard to the Public Sector Equality Duty (PSED) under s.149 of the Equality Act 2010. No points in relation to this were raised by any Interested Person or Affected Party. The ExA is satisfied nevertheless that there are no issues related to protected characteristics as defined in this Act and no circumstances arise in this case which would engage the PSED.

*Modifications made during the examination*

- 1.12 The applicant submitted a number of modifications or revisions to the application during the examination, all of which were accepted by the ExA. These are set out in Appendix E.

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<sup>2</sup> Two open floor hearings were scheduled for 5 December 2012, one in the afternoon, and one in the evening in Blyth Civic Centre.

## 2 MAIN FEATURES OF THE PROPOSAL AND SITE

### *Location*

- 2.1 The proposed development is in the North Blyth area of Blyth, within the administrative area of Northumberland County Council (NCC).

### *The proposed development*

- 2.2 North Blyth Energy Limited (the applicant), a wholly owned subsidiary of RES UK & Ireland, is seeking consent under s.37 of PA2008 to construct and operate a biomass-fuelled power station with an electrical output of approximately 99.9MW. This is to be located at Battleship Wharf within the Port of Blyth.
- 2.3 The proposed development would use wood-based biomass fuels in the form of wood chip, pellet or briquette or non-recyclable recovered wood waste that would otherwise be sent to landfill. Biomass fuel would be delivered primarily by sea. It is intended that some 80% of the biomass fuel would be delivered by ship, with the remaining 20% by road.
- 2.4 The proposed development would generate up to 99.9MW of renewable electricity from approximately 500,000 - 900,000 tonnes of biomass fuel per annum. The actual tonnage of fuel would be dependent upon the moisture content.
- 2.5 The proposed development would comprise the following main elements –
- a boiler house (up to 65m in height);
  - steam turbine building;
  - chimney stack (proposed to be up to 105m in height);
  - a water treatment plant;
  - control building;
  - biomass fuel storage buildings;
  - biomass fuel preparation area and conveyors;
  - cooling water intake and outfall;
  - grid connection by underground cable
- 2.6 The construction period for the proposed development would be approximately 30 months.

### *The site and its surroundings*

- 2.7 The site for the proposed development is located on the spit of land between the River Blyth Estuary and the North Sea, within the southern half of the Port of Blyth's



- Battleship Wharf. Battleship Wharf currently comprises bulk warehouses, external storage areas, hard-standing and made ground, part of which is used for coal storage and handling.
- 2.8 The Port of Blyth conducts port operations on both the north and south sides of the River Blyth Estuary and includes the Bates Wharf site to the west, Battleship Wharf to the north-east and South Harbour to the south-west.
- 2.9 Battleship Wharf is currently used for a range of activities including the import and export of coal, the import of biomass material and for the export of aluminium and stone. Additional cargoes such as wind farm components are handled through the port. The site has been in port and industrial use for many years, former land uses at Battleship Wharf include; railway sidings and an engine shed, port and harbour facilities, a ship-breaking yard, coal storage facilities and cargo storage and distribution.
- 2.10 Battleship Wharf is served by the North Blyth Road, the only road access, which enters the site from the south-east; and the Port of Blyth mineral rail link which forms its eastern boundary. North Blyth previously also had a ferry service from Blyth, but this ceased operation many years ago.
- 2.11 To the west of the site is the location of the former Blyth Power Station, which has been demolished and removed from the site. Adjacent to this site is the existing Northern Powergrid substation, to which the proposed development would make its grid connection.
- 2.12 To the east of the site is an area of sand-dunes and beach on the North Sea. Just offshore to the north-east is an area of exposed rocks known as The Rockers. Further offshore to the south-east are two offshore wind turbines.
- 2.13 The area to the south-west of the site and across the River Blyth Estuary, the former Bates Colliery, has been partly redeveloped by the Coal Authority as a water treatment facility for mine-water. Adjacent to this water treatment facility is Bates Wharf which is presently used for the export of recycled glass. To the south of the site is a port facility that previously served as Alcan's Bulk Terminal for the import of raw materials for the Alcan smelter north of Blyth at Lynemouth, which closed in March 2012.

- 2.14 To the south-east of the site is the residential area of North Blyth, only about 100m from the site boundary. On the south side of the River Blyth Estuary, the nearest residential properties of Blyth are located approximately 260m from the site boundary. Residential properties are also located approximately 500m to the north-west of the site at Cambois.
- 2.15 The Northumbria Coast Ramsar Wetland and Special Protection Area (SPA) is the closest internationally designated site to the Project, located approximately 150m to the east. This has been designated for its population of wintering birds; Western Palearctic Ruddy Turnstone (*Arenaria interpres*) and Eastern Atlantic Purple Sandpiper (*Calidris maritima*) in addition to its breeding bird population of the Eastern Atlantic Little Tern (*Sterna alnifrons*).
- 2.16 The Northumberland Shore Site of Special Scientific Interest (SSSI) is the closest nationally designated site to the proposed development. The SSSI partly overlaps with the Northumbria Coast Ramsar/SPA but also includes mudflats in the River Blyth Estuary, approximately 100m to the west of the site, and intertidal sand areas on the coast, approximately 100m to the east of the Facility Site. The River Blyth Estuary also has a local Site of Nature Conservation Importance (SNCI) for its ornithological interest and estuarine habitats. This site is classified as a non-statutory designation conservation site.

### *Policy and Legal Context*

- 2.17 Since National Policy Statements (NPS) for Energy – EN-1, the Overarching NPS, and EN-3, the NPS for Renewable Energy Infrastructure – are in effect, the Secretary of State as decision-maker will determine this application under s.104 of the Planning Act 2008 (PA2008)<sup>3</sup>.

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<sup>3</sup> **104 Decisions in cases where national policy statement has effect**

(1) This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.

(2) In deciding the application the Secretary of State must have regard to—

(a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”), (aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;

(b) any local impact report (within the meaning given by section 60(3) ) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),

(c) any matters prescribed in relation to development of the description to which the application relates, and

2.18 A primary policy directive in relation to the making of a decision<sup>4</sup> on this application is the statement in paragraph 3.1 of EN-1 that –

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

3.1.2 It is for industry to propose new energy infrastructure projects within the strategic framework set by Government. The Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.

3.1.3 The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part.

3.1.4 The IPC should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008<sup>16</sup>.

2.19 This is developed in EN-1 para 3.4.3, which deals specifically with the role of biomass as renewable and low-carbon technology –

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(d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

(3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

(4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.

(5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.

(6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.

(7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.

(8) This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

(9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying.

<sup>4</sup> EN-1 and EN-3 refer throughout to the Infrastructure Planning Commission (IPC) as the decision maker. Since the Localism Act 2012 the IPC has been abolished and all decisions are vested in the appropriate Secretary of State.

Biomass – biomass is a significant source of renewable and low carbon energy. It involves the combustion of fuel, such as wood, which is renewable because, through replanting and re-growth, the biomass can be replaced in a matter of decades and this cycle can be continuously repeated. Whilst energy is required to grow, harvest and transport it, biomass is considered to be low carbon, providing that the biomass has been cultivated, processed and transported with due consideration of sustainability. Its combustion also displaces emissions of carbon dioxide ordinarily released using fossil fuels.

- 2.20 A further advantage of biomass is set out in EN-1 para 3.4.4, which notes –

Biomass and EfW can be used to generate 'dispatchable' power, providing peak load and base load electricity on demand. As more intermittent renewable electricity comes onto the UK grid, the ability of biomass and EfW to deliver predictable, controllable electricity is increasingly important in ensuring the security of UK supplies.

- 2.21 Para 4.1.2 of EN-1 further states –

Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.2 of this NPS.

- 2.22 The overall policy context is thus a clear presumption that biomass is a necessary and acceptable source of energy for power generation.
- 2.23 The detailed requirements of EN-1 and EN-3 in relation to this application are considered in paragraphs 3.15 to 3.168 below.
- 2.24 No other NPSs have any bearing on this application. The proposed development would take place within the Port of Blyth, and make significant use of its facilities, since 80% of the biomass fuel feed-stock is proposed to be

brought in by ship, but this is within the existing capacity of the port (REP32).

#### *The Development Plan*

- 2.25 At the time that the examination started the development plan for the proposed site itself comprised the Regional Spatial Strategy for the North East, adopted in 2008, and the Wansbeck Local Plan, adopted in 2007.
- 2.26 On 15 April 2013 the Regional Strategy for the North East (Revocation) Order 2013/635 came into force.
- 2.27 Given the proximity of North Blyth to Blyth itself, the examination also took into account the provisions of the Blyth Valley Local Development Framework Core Strategy, adopted in 2007.
- 2.28 Northumberland County Council<sup>5</sup> (NCC) is in the process of developing its own local plan, and published its Core Strategy and Options Report in May 2012, which was subject to consultation up to August 2012.
- 2.29 The relevance of these documents to the examination is covered in paras 2.34(a) and 3.109 to 3.116.

#### *Marine Plans*

- 2.30 There is currently no draft or approved marine inshore plan for this area.

#### *Local Impact Report*

- 2.31 A Local Impact Report (LIR) was submitted by NCC (REP29). The LIR states that the general principles behind it were agreed by NCC's Planning and Environment Committee in September 2012 (para 1.1).
- 2.32 The applicant has provided an extensive commentary on the LIR in REP41.
- 2.33 The LIR sets out the consultation carried out by NCC itself as part of the preparation of the report (para 4.10), and the consultation responses are at Appendix 1 to the LIR.
- 2.34 The LIR identifies the following issues for consideration –
  - (a) general principles – conformity with the saved policies of the Wansbeck Local Plan,

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<sup>5</sup> A unitary authority

- concluding that the proposal is in general conformity with policy GP1 which encourages the use of previously used land in existing settlements, and EMP5 which seeks to support the continued operation of the Port of Blyth and the promotion of employment generally (7.2 – 7.4);
- (b) landscape and visual impact – the LIR notes some local concern, but concludes that the proposal overall would not have a significant impact at the landscape scale (7.5 – 7.9). This issue was explored further in the examination: see paras 3.99 to 3.108;
  - (c) air quality and emissions – the LIR notes concerns about dust nuisance from the port operations to unload biomass, and that the Health Impact Assessment has concluded that there should be no adverse impacts on health (7.10 – 7.14). Dust nuisance is considered below in paras 3.90 and 3.94, noise in paras 3.117 to 3.123 and health in paras 3.69 to 3.74;
  - (d) ornithology – the LIR concludes that, subject to appropriate mitigation measures mandated in the draft Development Consent Order DCO), there should be no adverse impact on the integrity of the Special Protection Area/Ramsar site (7.15 – 7.20). This is discussed in paras 3.23 to 3.31;
  - (e) terrestrial ecology – the LIR concludes that appropriate measures in the draft DCO should protect the Grayling butterfly and the common lizard and otter (7.21). These points are addressed in Requirement 11 of Schedule 4 to the draft DCO;
  - (f) traffic and transport – the LIR notes that the site will be accessible by foot and bicycle, and that the additional road traffic should make a significant difference to the traffic already generated by the port. It also notes the proposed inclusion in the draft DCO of requirements relating to a construction traffic management plan and a travel plan. It refers also to the intention to conclude a s.278 agreement to cover offsite highways improvement work (7.22 – 7.26). These points

are discussed below in paras 3.133 to 3.143;

- (g) residential amenity – the LIR notes the adverse (visually potentially ‘oppressive’) impact on the settlement of North Blyth (7.27 – 7.28). These impacts are discussed below in paras 3.99 to 3.108, 3.113 to 3.116 and 3.133 to 3.143;
- (h) cultural heritage – the LIR states that NCC is satisfied that no archaeological work is required, and that there will be no impact on any conservation areas in the general location (7.29 – 7.30);
- (i) socio-economic – the LIR notes the potential for job creation, particularly during the construction phase, and NCC’s desire to maximise the benefits of training and local employment (7.31 – 7.32). This is discussed further in paras 3.124 to 3.132 below. The LIR also refers to concerns about fire safety (7.32), which is considered in paras 3.60 to 3.68 below.

2.35 The LIR also notes the possibility of competition with the Egger woodchip plant (7.34). This particular point is addressed in section 9 of the applicant’s comments on the LIR (REP41), which concludes that there should be no adverse impact. The ExA judged this point to have been assessed adequately, and it was not pursued further in the examination.

2.36 NCC’s overall conclusions in the LIR (Section 8) are broadly supportive –

- The proposed development is in general accordance with the development plan
- NCC supports the development of renewable energy if this can be achieved in ways which are themselves sustainable, and the proposal conforms with the aspiration to make the Blyth Estuary a centre for uses associated with renewable energy
- There are local concerns about the impact of the development on the residential amenity of North Blyth
- There is a more general local concern about the impacts of the scheme on the area, but against that there are potential benefits in terms of employment and the promotion of renewable energy.

### 3 FINDINGS

#### *Initial Assessment of Principal Issues*

- 3.1 In accordance with s.88 of PA2008, the ExA made an initial assessment of principal issues. This was sent to all Interested Parties on 5 July 2012 (PD6) and was part of the agenda for the Preliminary Meeting held on 2 August 2012.
- 3.2 The ExA explained that this was the initial assessment of the principal issues. It was not a comprehensive or exclusive list of all relevant matters, and the ExA would have regard to all relevant and important matters when putting forward a recommendation after the examination was concluded.
- 3.3 The ExA's assessment of the principal issues was based on an examination of all the application documents and all the Relevant Representations that had been made.
- 3.4 A total of 204 Relevant Representations was received (RREP1 to RREP204). Of these 189 were from individuals or couples as opposed to agencies or other entities. Of these 167 were from people who did not live or work locally, although a small number claimed family or historical links to the area<sup>6</sup>.
- 3.5 These 167 representations were almost all expressing concern or offering objection on what might be described as grounds of principle. In many cases the same wording and arguments, or modules of arguments, were used, based on a text apparently supplied by the organisation Biofuelwatch (see RREP131, which says so explicitly).
- 3.6 The key propositions in these representations were that –
- Biomass generation creates more CO<sup>2</sup> than traditional fossil fuels
  - The emission would worsen local air quality and create a health hazard
  - The intake water and discharged cooling water would have adverse effects on the river and the European sites
  - The plant was likely to fall short of recommended efficiency standards, because it would only generate electricity

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<sup>6</sup> Only one person in this category submitted a further Written Representation – REP23.



- The biomass fuel feedstock would have to be sought from overseas, and would quite possibly come from unsustainable sources
- Even if the feed-stock was itself sustainable its procurement might have serious adverse effects on local communities where it was harvested.<sup>7</sup>

3.7 Others of these representations focused on concern as to the sourcing of the biomass, as for example RREP127 from Dr Peter Hirst, who wrote –

To only allow if any organic feed is obtained from sustainable sources and a full life cycle analysis including transport indicates a significant net advantage in terms of carbon i.e. it takes carbon out of the atmosphere.

3.8 The North Tyneside Friends of the Earth (NTFoE) shared some of the views expressed by Biofuelwatch, and stated that –

FOE are not against the use of biomass for energy production as long as it is small scale, either CHP or heat only. We are against importing wood for use in inefficient thermal electric power stations; these will have an efficiency of 30% c.f. 70-80% for CHP plants. (RREP175)

3.9 The 22 Relevant Representations from local residents were a mix of individual responses and template letters. The most comprehensive representation was perhaps that from Mr Paul Crossland<sup>8</sup>, a resident of North Blyth, who set out 26 concerns (RREP178). In summary these related to –

- Proximity to schools and homes, with a likely adverse impact on property values
- Safety and the lack of evacuation plans
- The lack of local economic benefit
- The impacts on traffic levels
- The danger from emissions and the disturbance of a contaminated site
- Visual impact
- Doubts as to the sustainability of biomass, and the apparent failure to apply Combined Heat and Power

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<sup>7</sup> RREP149 is a typical example of this standard representation

<sup>8</sup> Mr and Mrs Crossland took an active role representing local interests and concerns throughout the examination, and made a very valuable contribution to the proceedings.

- The question of whether the proposal complied with local plans
  - Proximity to the European sites and the possible damage to the ecology
  - A belief that the site is too small for the proposed development.
- 3.10 The ExA took the view, based on the provisions of EN-1 and EN-3 noted in paras 2.17 to 2.24 above, that the principle of the use of biomass for generation was a matter of settled policy and therefore not something which should form part of the examination<sup>9</sup>. Accordingly the principal issues as seen by the ExA at the start of the examination were -
1. Strategic planning context for Blyth and Northumberland
  2. Sustainability of the biomass fuel and the means by which this is assured
  3. Access and transport
  4. Landscape and Visual Impacts and Design
  5. Emissions
  6. Safety
  7. Marine environment and Habitats Regulations Assessment
- 3.11 As recorded in the Rule 8 letter sent on 15 August (PD10), no representations were made that this assessment should be changed.
- 3.12 The selection of these issues informed the ExA's first round of written questions and the decisions as to which topics might require Specific Issue hearings.
- 3.13 The following sections of this Report deal with the examination of the principal issues and the other matters that became important and relevant to the examination, and which are therefore relevant to the Secretary of State's final decision.
- 3.14 The primary framework for the organisation of the Report is compliance with the requirements of the two relevant NPSs and the provisions of s.104. The Report then deals with issues of compulsory acquisition and the draft DCO.

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<sup>9</sup> See also para 3.35 below

## ***Key Issues in the Examination***

### ***Policy Context***

#### *Environmental Statement*

- 3.15 Section 4.2 of EN-1 requires that all proposals for projects that are subject to the European Environmental Impact Assessment Directive must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project.
- 3.16 The applicant has submitted an ES (APP44 to APP141). The Statement of Common Ground (SoCG) between the applicant and Natural England (SoCG1) sets out the areas of agreement between the two parties with specific reference to the ES and its handling of biodiversity issues (see Section 3). The SoCG confirms the adequacy of the ES in the view of Natural England (NE), and that there are no outstanding issues of disagreement. Similarly the SoCG between the applicant and Environment Agency (SoCG3) confirms that Environment Agency (EA) is satisfied with the ES as it relates to the marine environment.
- 3.17 The ExA considers that all matters relating to biodiversity (EN-1, 5.3) have been addressed adequately in the ES. Potential issues relating to the Habitats Directive and the Birds Directive are covered in paras 3.23 to 3.31 below.

#### *Environmental Statement – Socio-economic impacts*

- 3.18 The ES includes in file 6.1.17 (APP62) an assessment of the likely socio-economic effects of the proposed development, as specified in 4.2.2 of EN-1.
- 3.19 This assessment covers the construction, operation and decommissioning phases of the project as required by 4.2.4 of EN-1 (Tables 17.7, 17.8 and 17.9; see also Section 3 of the Non Technical Summary, APP140) and includes consultation at the scoping report stage with such bodies as the strategic health authority, the police and local councils.
- 3.20 With regard to issues of community cohesion and well-being identified in 4.2.2 of EN-1, a noteworthy feature of the project introduced in the ES is the establishment of a Community Fund to be administered by a Community Liaison Group. This is covered by a s.106 undertaking with NCC and the Port of Blyth.(REP2)

- 3.21 During the course of the examination the applicant modified the draft DCO to include a new Requirement 46 setting out the details of a workforce development strategy to support local employment to be approved by NCC as the local planning authority before works commence. Under Requirement 46(g) this would now include the involvement of the Community Liaison Group.
- 3.22 The ExA considers that the ES as submitted is a comprehensive and well-evidenced document that meets the broad requirements specified in 4.2 of EN-1.

*Habitats and Species Regulations*

- 3.23 Section 4.3 of EN-1 points to the need to meet the requirements of the Habitats and the Birds Directives.
- 3.24 Section 5.3 of EN-1 specifies how applications should address issues relating to biodiversity and geological conservation.
- 3.25 Chapter 10 of the ES (APP55) deals with terrestrial ecology, Chapter 11 aquatic ecology and Chapter 12 (APP57) addresses ornithology. Survey work for terrestrial ecology included habitat surveys, a grayling butterfly survey and a reptile survey. The assessment included consultation with Natural England (NE), Environment Agency (EA), NCC and Butterfly Conservation.
- 3.26 The SoCG submitted by the applicant and NE on 24 October 2012 (SOCG1) records full agreement between the two parties on the approach to Habitats Regulations Assessment (Section 4) The SoCG with EA includes geological issues (SoCG3).
- 3.27 The main conclusions in the SoCG with NE relating to terrestrial ecology are that the potential impacts of the project from construction and operational noise on terrestrial ecological receptors will not be significant; the project will have no significant impacts on bats; and that the project is unlikely to have a significant impact on local populations of common lizards (SOCG1, para 3.3.5).
- 3.28 As to the Habitats Regulations Assessment, the main conclusions in the SoCG are that –
- The project will not have an effect on any European offshore marine sites;

- the only European Site on which the project may have an effect is the Northumbria Coast SPA, and the qualifying species for the Northumbria Coast SPA, in view of its conservation objectives, are little tern, turnstone and purple sandpiper;
- the Habitats Regulations Assessment (HRA) submitted with the application takes an appropriate approach in assessing whether the Project is likely to have significant effect on the Northumbria Coast SPA, either alone or in combination with other plans or projects;
- the project is not likely to have a significant effect on the Northumbria Coast SPA in respect of the little tern species, either alone or in combination with other plans or projects;
- the HRA contains sufficient information to inform an Appropriate Assessment should the Secretary of State consider it necessary to make an Appropriate Assessment of the implications for the Northumbria Coast SPA in respect of the turnstone and purple sandpiper species;
- the project will not adversely affect the integrity of the Northumbria Coast SPA either alone or in combination with other plans or projects. (SOCG1, section 4)

3.29 On 3 January 2013 the ExA issued a Report on the Impact on European Sites (RIES) (PD22, and Appendix G to this Report), setting out the ExA's understanding of the main facts regarding the Habitats Regulations Assessment to be carried out by the Secretary of State in relation to this application. Interested Parties were asked to confirm whether they considered this understanding of the facts to be accurate, and if not, to explain why not.

3.30 NE, the relevant Statutory Nature Conservation Body, responded (REP88) on 21 January 2013 confirming the ExA's understanding in the RIES, including the conclusion that sufficient mitigation is secured through the draft DCO to ensure that there are unlikely to be effects on the integrity of the European Site.

3.31 Given this level of agreement, the ExA concludes that there are unlikely to be matters relating to the Habitats or the Birds Directive that require the Secretary of

State's further consideration, or which should be an obstacle to his granting development consent for this application.

### *Alternatives*

- 3.32 Following section 4.4 of EN-1, there is no policy requirement to consider alternatives to the proposed development, but Schedule 4 Part 2 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 states that the ES should include –
- an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects.
- 3.33 The consideration of alternatives is set out in Chapter 3 of the ES (APP47). This considers in some detail the policy framework for the application; the issue of possible alternative sites (covered in detail in Chapter 5, APP49, dealing with site selection); and the possibility of alternative processes.
- 3.34 A significant number of IPs sought to challenge the legitimacy of biomass as a source of renewable energy, and this was the case that the North Tyneside Friends of the Earth (NTFoE) made in their Written Representation (REP22) and part of the case that they sought to argue at the Specific Issue Floor Hearing on the draft DCO (HEA4).
- 3.35 The ExA took the view at the hearing that the explicit policy support for biomass in EN-1 and EN-3 and the application of the provisions of s.87(3)(b)<sup>10</sup> meant that the submission by NTFoE should not be given weight.<sup>11</sup>
- 3.36 The ExA concludes that there has been an appropriate examination of alternatives by the applicant, and that the objections brought by certain IPs are objections to the explicit policy in the NPSs (see paras 2.18 to 2.22), and as such not admissible as relevant and important considerations.

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<sup>10</sup> (3) The Examining authority may in examining the application disregard representations if the Examining authority considers that the representations—

(a) ...

(b) relate to the merits of policy set out in a national policy statement, or

(c) ...

<sup>11</sup> The ExA advised NTFoE at the hearing that as matters of policy the points that they sought to make would be more appropriate as a response to the then current DECC consultation.

*Good Design*

- 3.37 EN-1 (section 4.5) and EN-3 (section 2.4) both refer to the importance of good design. In 4.5.3 of EN-1 this is expressed as matter of both functionality (fitness for purpose and sustainability) and aesthetics.
- 3.38 The proposed development is of a nature that its basic characteristics – a ‘power island’, including a boiler building, the stack of 105m, the turbine hall, a control room and treatment facilities, and the storage areas – are to a significant extent given. (See Chapter 4 of the ES, section 4.3, APP48.) There is relatively little scope to modify the design, disposition and height of the various components of the scheme; and the site itself is significantly constrained by being in a port on a relatively narrow spit of land.
- 3.39 Nevertheless, the applicant demonstrated in the Design and Access Statement (DAS) (APP144) that formed part of the application that it had sought to consider a range of options that might reduce the impact of the development both in relation to North Blyth and at the landscape scale, thus in the ExA’s view complying with the intentions of 4.5.4 of EN-1. Five original concepts were reduced to two schemes for public consultation, and a design review sought by the applicant from the then CABE, as advised in 4.5.5 of EN-1, also fed into the production of the final preferred scheme.
- 3.40 The essential fact is that the proposal constitutes a large development in a small place, and very close to the settlement of North Blyth. The impacts on North Blyth were one of the reservations expressed by NCC in the LIR and by local residents. The ExA accordingly identified this as one of the principal issues in the examination, and held a Specific Issue hearing to probe matters further.<sup>12</sup>
- 3.41 As a consequence of the examination the applicant proposed modifications to Requirements 3 and 33 in the draft DCO, to the effect that the final details of design, still following the principles set out in the ES and DAS, should be approved by NCC. This is explained in Section 3 of the applicant’s written submission of case following the SI hearing, HEA13.
- 3.42 The ExA concludes that overall the applicant has complied with the requirements of the two NPSs in relation to design, and that the proposals brought

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<sup>12</sup> See paras 3.99 to 3.108

forward, subject to the modifications to Requirements 3 and 33, represent an appropriate design solution.

#### *Combined Heat and Power*

- 3.43 Section 4.6 of EN-1 and paragraphs 2.5.26 to 27 of EN-3 place emphasis on the need to consider the possibility of using Combined Heat and Power (CHP) outputs from a thermal plant, and the need for the applicant to give justification if its application is not proposed.
- 3.44 The applicant submitted a detailed study of a range of CHP options and scenarios as part of the application (APP72).
- 3.45 The essential conclusion of this study is that there is at present and for the immediate future no viable commercial demand for CHP, and that the appropriate strategy to follow is therefore one of 'CHP readiness'.
- 3.46 The provisions setting out this CHP readiness form Requirement 38 of the draft DCO. In their final form these are in essence –
- the need for EA approval of CHP works before the plant is brought into use
  - the need for the applicant to maintain CHP readiness over the whole life of the plant
  - the need for the applicant to submit a CHP Review a year after the plant commences operation, to be approved by NCC in consultation with EA
  - the need to submit updated CHP Reviews every five years thereafter.
- 3.47 In the ExA's view this represents an appropriate, proportionate and enforceable compliance with the objectives of the NPSs.

#### *Climate Change Adaptation and Flood Risk*

- 3.48 Section 4.8 of EN-1 sets out the requirement for the decision-maker to be satisfied that the proposed development takes adequate account of risks that may arise from climate change, and particularly flood risk.
- 3.49 Most of the proposed facility lies within Flood Zone 1 (low risk). The western section of the site however lies within modelled tidal Flood Zone 3 (High Risk, 1 in 200 year tidal flood risk) and Flood Zone 2 (medium risk, 1 in 1000 tidal flood risk).



- 3.50 The applicant's assessment of flood risk is covered in Chapter 14 of the ES (APP59) and its associated Appendix 14.1 (APP110). The scoping opinion issued by the IPC followed EA's view and advised that the applicant should consider climate change requirements in line with Annex E of PPS25<sup>13</sup>, and the applicant demonstrates in Chapter 14 how the values derived from PPS25 have been extended to 2070 for a range of return periods which include 1 in 200 years and 1 in 1000 years events and applied to the highest tide. The applicant calculates that in the event of both the 200 and the 1000 events in 2070, water could encroach upon the southern corner of the proposed location for Storage Shed 4 (APP59, Figures 14.1 – 14.4).
- 3.51 EA comments (REP25) that it acknowledges that the Sequential Test has been undertaken for the proposed development within the Flood Risk Assessment submitted. EA states that it is unable to confirm whether or not the Sequential Test has been passed: EA considers that it is for the decision-maker to determine whether or not there are other sites available at lower flood risk. EA is satisfied that Requirement 20 in the draft DCO is sufficient to secure the necessary flood risk mitigation.
- 3.52 The ExA concludes that the applicant has made an adequate assessment of flood risk that takes full account of the additional risk from climate change, and complies with the requirements of EN-1. The resulting flood risk if the project goes ahead should be minimal. In these circumstances the question of whether there might be other sites available with lower flood risk is not relevant.

#### *Grid Connection*

- 3.53 The applicant has included a proposed grid connection within the application, as advocated by 4.9.2 of EN-1, and a grid connection statement is included with the application at APP143. The land proposed for compulsory acquisition is required primarily to make the connection to the NPG sub-station on the site of the former Blyth Power Station.
- 3.54 The ExA concludes that the application complies with section 4.9 of EN-1 in this respect, and with para 2.5.22 in EN-3.

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<sup>13</sup> PPS25 has been superseded by the National Planning Policy Framework, but the ExA does not consider this relevant to the soundness of the methodology used.

*Pollution Control and other environmental regulatory regimes*

- 3.55 Section 4.10 of EN-1 notes the need to ensure that the requirements of other consenting regimes are met.
- 3.56 A full list of consents required under other regulatory regimes, including environmental regulatory regimes, is provided in REP62 and Appendix B: this shows the position for each consent required as of 18 January 2013.
- 3.57 With specific regard to the Environmental Permit that the scheme would require, at the close of the examination the applicant had not made a formal application to EA, although discussions had commenced. In response to a Rule 17 question form the ExA, EA stated on 25 January (REP58) that from the information currently available EA did not feel there were any indications to suggest that it would be unlikely to agree to issue an Environmental Permit.
- 3.58 A Deemed Marine Licence is part of the draft DCO. This is discussed at paras 6.10 to 6.14 below. Section 4.5 of the Statement of Common Ground between the applicant and MMO (SoCG5) records the agreement between the applicant and MMO on the extent of activities to be controlled by the licence. The ExA has relied heavily on the views of Marine Management Organisation (MMO) as the enforcement body for marine activities.
- 3.59 The ExA concludes that there is no reason to assume that the granting of any necessary licence under other regulatory regimes will be withheld, and that therefore following 4.10.8 of EN-1 the Secretary of State as decision-maker should have no reason to withhold development consent on these grounds.

*Safety and Hazardous Substances*

- 3.60 The applicant has been in early contact with the Health and Safety Executive (HSE) (APP79). HSE has not confirmed that the proposed development will be subject to the Control of Major Accidents Hazards (COMAH) Regulations 1999 and the applicant has not been required to provide a Safety Report (EN-1 para 4.11.4). If development consent is granted the applicant will confirm any COMAH requirements with HSE (REP62) at that stage.
- 3.61 Safety was identified as a principal issue for the examination, primarily in relation to the storage and handling of biomass and the risk of fire or explosion arising. The proximity of the settlement at North Blyth,

and the fact that its sole land access lies around the proposed development, were key considerations. The ExA put written first round questions to the applicant (PD7, questions 31 to 41).

- 3.62 These sought primarily to understand possible safety issues in relation to the January 2012 fire at the biomass station in Tilbury; the relationship of the project to the consented biomass storage facility in the Port of Blyth; and the preventive measures proposed.
- 3.63 The applicant provided detailed written responses to these questions (REP35). A key part of the response was the explanation that the biomass fuel, the storage system, the handling system, and the combustion system at North Blyth are very different to those that exist at Tilbury. Biomass and coal fuels behave differently and as such, using customised and appropriate equipment to handle and monitor them is paramount to safe operation. The applicant states that the proposed development would not use any existing equipment that had previously been designed for use with coal: it will be entirely designed specifically for its purpose to handle biomass fuels. The applicant also states that a biomass specific heat detection and fire suppression system will be designed into the proposed biomass power station from the start.
- 3.64 A Specific Issue hearing was held on 5 December 2012 to examine these matters in greater detail. The summary of the applicant's case is at HEA35. The main points made by the applicant in response to the ExA's questions were that –
- the proposed development will not be a conversion of existing plant but will be designed to operate biomass from the outset, using a proven fluidised bed technology
  - there will be no fuel processing on site, and all fuel stocks will be in continuous circulation, used in the order received
  - all fuel feed-stocks will be stored inside six specially designed stores, and different types of feedstock will be stored separately
  - adequate safety separation is provided between the plant and the residential area of North Blyth, its Social Club and the Club's oil storage tank
  - a summary of safety procedures, including the question of whether and when evacuation might be necessary, would be circulated to

residents, and this would be part of Requirement 21.

- 3.65 The applicant has proposed a revised Requirement 21 to the draft DCO dealing with fire prevention. This restricts commencement of the development until a fire prevention method statement, incorporating a fire risk assessment, has been approved by NCC. The applicant would be required to consult the Northumberland Fire and Rescue Service (NFRS) and the Port of Blyth on the method statement submitted.
- 3.66 The detail of Requirement 21 was further developed during the examination, and NFRS confirmed (HEA47) that, subject to the changes they had sought, now incorporated in the draft DCO, they are content with the fire safety measures.
- 3.67 The removal of fly-ash from the plant would be controlled by the Environmental Permit to be sought from EA (HEA35, para 7.2).
- 3.68 The ExA is satisfied that the applicant has given adequate and appropriate consideration to the safety issues associated with the proposed development. On the basis of the applicant's discussions with HSE (APP79) and the absence of any objections from HSE there is no reason to believe that HSE would at the detailed design stage consider the inherent features of the design to be insufficient to prevent, control and mitigate major accidents. EA and NFRS would also have a continuing role to play in controlling further details.

#### *Health and Air Quality and Emissions*

- 3.69 Section 4.13 of EN-1 deals with the general question of health, and section 5.2 with emissions, the most obvious possible impact in the application.
- 3.70 The need for a Health Impact Assessment (HIA) was identified through the responses to the Scoping Opinion, and an HIA was provided by the applicant as part of the ES (APP118) as a supplement to the report on socio-economic impacts.
- 3.71 The HIA concludes that there would be no measurable effects on health as a result of changes to the physical environment (e.g. changes in air quality or noise levels) as a result of the proposed development: any changes would be very small in magnitude and insignificant. The HIA notes, however, that –

This conclusion may be contrary to local community opinion, for whom perceived effects could present a prominent anxiety. (APP118, section 6, first paragraph)

- 3.72 In its Relevant Representation (RREP195) the Health Protection Agency (HPA) drew attention to further information which it believed the applicant should provide to establish potential levels of risk to public health.
- 3.73 This became the subject of first round written questions from the ExA (PD7, Questions 24 to 28). HPA confirms in its response (REP34) that it is content that all the necessary information has been provided subsequently by the applicant and that it is now satisfied that the proposed development would not have a significant impact on public health.
- 3.74 The ExA considers that there is no evidence to suggest that the proposed development would have an adverse impact on public health.

#### *Common Law Nuisance and Statutory Nuisance*

- 3.75 Paragraph 4.14.2 of EN-1 advises that mitigation or limitation of possible sources of nuisance should be considered.
- 3.76 No representations were made on this point during the examination, and the ExA is satisfied that the various elements of possible nuisance have been considered adequately and appropriately by the applicant, and that the draft DCO in its final form contains the necessary Requirements to mitigate nuisance.
- 3.77 In the ExA's judgement it is not necessary or appropriate in this case to disapply the defence of statutory authority in whole. The defence of statutory authority for nuisance under s.158 will still therefore be available to the applicant, subject to article 8 in the DCO (see para 6.23 below) which provides a defence for noise nuisance as a consequence of construction or maintenance of the development (EN-1 paragraph 4.14.3).

#### *Security Considerations*

- 3.78 Section 4.15 of EN-1 identifies possible issues of national security in relation to energy infrastructure.

- 3.79 No representations were made in regard to national security considerations, and in the ExA's judgement they do not apply in this application.

*Civil and Military Aviation and Defence Interests*

- 3.80 Section 5.4 of EN-1 sets out requirements for civil aviation and defence interests.
- 3.81 The Civil Aviation Authority (CAA) made a Relevant Representation (RREP142) in which it stressed the need to take account of the views of Newcastle Airport and Blyth Heliport.
- 3.82 The applicant responded to these concerns (REP20) identifying the section (9.6.42) in the Consultation Report (APP39) where these two bodies had been consulted, and noting the consultation with the police and the air ambulance as local operators. Newcastle Airport responded that it was unlikely there would be any detrimental impact on its operations from the proposal.
- 3.83 Requirement 26 of the draft DCO requires the applicant to provide the Defence Geographic Agency with the details of the stack for charting purposes, and Requirement 27 to consult CAA on stack safety measures and to seek approval from NCC before construction of the stack commences.
- 3.84 The ExA considers that issues relating to aviation have been considered adequately and appropriately in the application.

*Coastal Change*

- 3.85 Section 5.5 of EN-1 specifies how applications should address possible coastal change and other potential marine geo-morphological impacts.
- 3.86 The proposed development, apart from the grid connection and the outfall, would take place on land leased from the Port of Blyth, protected by the harbour wall. No issues related to coastal morphology have been raised by EA, or by the MMO in relation to the Deemed Marine Licence.
- 3.87 Para 15.2.29 of Chapter 15 of the ES (APP60) assesses the contribution that the outfall from proposed development might make to long-shore drift and concludes that there should be none.

- 3.88 In the ExA's view the proposed development has no implications for coastal change or marine geomorphology

*Dust, odour, artificial light, smoke, steam and insect infestation*

- 3.89 The potential risks that these might present are addressed in Section 5.6 of EN-1 and para 2.5.59 of EN3.
- 3.90 Requirement 34 in the draft DCO now provides that first commercial use may not commence until a written scheme for management and mitigation of dust emissions has been approved by NCC. This includes the use of hoppers for unloading fuel feed-stocks, the management of both fuel and fly-ash and the use of dust level monitors. Requirement 13 provides for the control of dust during construction.
- 3.91 Requirement 33 similarly requires that a scheme for the control of artificial light emissions be approved by NCC before first commercial use occurs, and now includes a prohibition on up-lighting of the main generating station to prevent possible light pollution from this source. This should mitigate the risk of light pollution at the landscape scale. Requirement 16 provides for the control of external lighting during construction.
- 3.92 Control of steam emissions was originally covered by Requirement 36, a model provision in The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (2009 SI No. 2265). During discussion between the applicant and EA, however, EA requested its removal on the basis that steam emissions would be more appropriately regulated by the Environmental Permit. The ExA concurs with this approach.
- 3.93 The applicant was asked about the risks of insect infestation in the first round of written questions. The applicant responded that –
- the fuel stocks would be used on a first-in, first-out basis, with frequent disturbance of the biomass fuel piles, so there would be very limited opportunity for any vermin infestation to take hold
  - there would be constant 24/7 operation in the stores, with both vehicles and plant operators moving about, again discouraging vermin infestation
  - the wood fuel contains no source of food for such vermin, and does not inherently attract such infestation. (REP35, Question 40)

- 3.94 The ExA judges that the various risks have been assessed adequately and appropriately, and that the Requirements in the current version of the draft DCO are sufficient to manage and mitigate the risks.

*Historic Environment*

- 3.95 The impact of the proposed development on the cultural environment (section 5.8 of EN-1) is assessed in APP61 forming part of the ES.
- 3.96 The study concludes that there are no internationally or nationally important archaeological features within the study area and only one known cultural heritage feature of international or national importance within the Study Area, the Grade II listed North Blyth Coal Staithes to the south of the site. It is expected that there will be a moderate negative effect on the coal staithes.
- 3.97 The ExA notes, however, that it is only the base of the coal staithes that has been preserved; it requires the exercise of considerable powers of imagination informed by research of old photographs to recreate the image. English Heritage's assessment that 'there is no archaeology left' and that the site is not an 'historic asset' (APP61, para 16.3.1) seems very apt.
- 3.98 The ExA concludes that the development can proceed without detriment to the historic environment.

*Landscape and visual*

- 3.99 The importance of these impacts is set out in section 5.9 of EN-1 and para 2.5.46 of EN-3.
- 3.100 Landscape and visual amenity are addressed in Chapter 9 of the ES (APP54).
- 3.101 The most significant conclusion of the assessment is –
- Two significant landscape impacts occur on the small scale urban form of North Blyth (sensitivity - High, magnitude – Moderate) - Major Adverse - and that of Blyth Town Centre (sensitivity - High, magnitude – Slight) - Moderate Adverse. This is due to the large difference in scale between the small urban form of both North Blyth and Blyth Town Centre, and the close proximity of the Project to these areas. The major difference in scale will make the residential pocket of North Blyth more isolated and fragmented, hence the resulting greater impact (Please refer to Photomontage 13 Figure 9.37). The impact to Blyth Town Centre is



considered to be indirect, and therefore resulting in a moderate adverse impact. (APP54, para 9.9.14)

- although the assessment also notes that the proposed development would also have a 'major adverse' impact on the housing proposed at the Bates Colliery site, East Sleekburn and parts of South Cambois (APP54, para 9.12.6).

3.102 Given the scale and nature of the project it must undoubtedly have impacts on many receptors: but it is essentially another industrial feature in an established industrial landscape, the point made in 5.36 of APP54. In the terms of the criteria in 5.9.15 of EN-1, the need to –

... judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

- it would be very difficult to conclude that this is the case here.

3.103 The examination did look into mitigation measures, both in terms of impacts on nationally designated areas and local impacts.

3.104 First round written questions were posed as to whether the impact on the Northumberland National Park could be reduced (PD7, Questions 21 and 22). The applicant explained that –

A choice was, therefore, made to prioritise the mitigation of potential significant impacts from near to mid range views where the proximity of the proposed biomass power station to small residential areas, combined with the size and scale of some elements within the proposed biomass power station were of principal concern. (REP35, para 21.20)

- which in all the circumstances the ExA agrees is the correct choice.

3.105 As a result of the examination process the applicant has changed its position on the scope for secondary mitigation measures (HEA13, para 5.7) to the benefit of both North Blyth and Blyth, and now believes that –

... this additional mitigation will reduce impacts from major adverse to moderate adverse for residents at Worsdell Street, North Blyth and Crawford Street, Blyth. Impacts to the Social Club

in North Blyth are also predicted to reduce from major adverse to minor adverse. APP54, para 5.8)

- 3.106 The ExA considers that the assessment of the landscape and visual impacts has been adequate and appropriate, following well-established methodology and taking NCC's own Landscape Character Assessment into account.
- 3.107 The ExA concludes that the impact on the Northumberland National Park and other distant receptors will not be significant.
- 3.108 The very local impacts will be significant, particularly for North Blyth; but the number of people affected will be limited and the commitment to secondary mitigation through landscaping to be secured through a s.106 agreement is helpful. On balance there are not sufficient grounds to conclude that these impacts should prevent the project from proceeding.

*Land use including Open Space, Green Infrastructure and Green Belt*

- 3.109 Section 5.10 of EN-1 is relevant here.
- 3.110 First-round written questions (PD7, Questions 1 to 6) sought to establish from NCC the extent to which the proposed development complied with the local planning authority's overall vision for the area and specific intentions as to allocation of sites.
- 3.111 NCC's responses (REP37) indicate that the council believes that the proposal is in general conformity with the policies of the extant local plans, and with the emerging NCC Core Strategy. No conflict is noted.
- 3.112 The main development is proposed to take place within the Port of Blyth, an area to which there is no public access.
- 3.113 The most significant impact of the project on open space and other amenity would be its positioning in relation to the beach at North Blyth. It would not restrict access to the beach *per se*, but it would create a very powerful back-drop to it. This concern was expressed by Mr and Mrs Crossland (RREP191; REP27 para 4).
- 3.114 The ExA visited the beach at low-tide as part of the accompanied site visit, in which Mr and Mrs Crossland took part. The beach in this area is used for casual recreation - it has no formal facilities; the morphology of the beach is dynamic; and the access route from North

Blyth would appear to be in the nature of a hereditary secret.

- 3.115 There can be no doubt that the proposed development would detract from the visual quality of the setting of the beach; but those who habitually use the beach will not be prevented from using it and, in the ExA's judgement, will probably continue to use and enjoy it.
- 3.116 The ExA concludes that there are no land-use issues that should stand in the way of the proposed development.

#### *Noise and Vibration*

- 3.117 The importance of these possible effects is covered in section 5.11 of EN-1 and 2.5.53 of EN-3.
- 3.118 The likely effects of noise and vibration and the mitigation measures necessary to deal with them are set out in Chapter 8 of the ES (APP53).
- 3.119 The assessed effects, pre- and post-mitigation, are summarised in Table 8.16. In effect all likely noise and vibration effects are assessed as insignificant even before mitigation, except for noise from project operation, which is assessed as significant before but insignificant after mitigation.
- 3.120 The noise mitigation measures for the project when operational are secured through Requirement 41 of the draft DCO. The Explanatory Memorandum noted that –
- This differs from Model Requirement 25, firstly by separating noise requirements for construction and operation (the former is dealt with in requirement 15 above) and secondly by providing the detailed noise controls on the face of the Order rather than specifying a mechanism for them to be agreed later.
- 3.121 This requirement was developed during the examination in response to points raised by NCC. The ExA is satisfied that in its final form it provides appropriate and adequate assurance of mitigation.
- 3.122 The assessment also notes that in the worst-case scenario of all fuel feed-stock being delivered to the plant by road, and the Port of Blyth's consented biomass storage plant receiving one million tonnes by road in a year, then the noise impact would be moderate (APP53, para 8.10.14). The report does not consider that this calls for mitigation measures. Given the proposed Requirement 43, which provides for a traffic mitigation

plan to be drawn up and implemented if road deliveries exceed a specified level, the ExA concludes that adequate safeguards are available to NCC.

- 3.123 The ExA believes that adequate and appropriate safeguards have been developed in the draft DCO to mitigate any noise and vibration effects.

*Socio-economic impacts*

- 3.124 Section 5.12 of EN-1 requires the decision-maker to have regard to the socio-economic impacts of the proposed development.
- 3.125 The applicant has assessed the likely impacts in Chapter 17 of the ES (APP62), and NCC devotes a section to this in its LIR (REP29, paras 7.31 to 7.34).
- 3.126 The proposed development would include a small visitor centre to promote education about renewable power, as suggested in the former PPS22. The immediate area does not have a major tourist industry, so the impact of the proposed development on the beach at North Blyth noted in paras 3.113 and 3.114 above would not have a significant impact on the local economy. The area has an exceptionally rich industrial history, but regrettably very little of this seems to survive as industrial archaeology: Battleship Wharf itself was the site of the Hughes Bolckow ship-breaking yard, but there is no interpretative material on this or the former adjacent coal staithes.
- 3.127 In an area of significant under-employment the employment opportunities represented by the proposed development should be an important and relevant consideration. The ES refers to the fact that the project would support the continued operation of the Port of Blyth (APP62, para 17.2.10 - 12), and that 'a number of jobs' would be created through both construction and operation of the plant and fuel delivery. (para 17.2.13)
- 3.128 In the Development Description, Chapter 4 of the ES (APP48), this is assessed as a total workforce of 50 to 60 staff once the plant is operational, of which approximately ten would be office-based, 20 operational/engineering staff working shifts and another 30 primarily engineering staff on day shifts (para 4.3.108). Numbers of construction personnel would peak at approximately 300, with an average of 150 (para 4.5.89). The applicant states that a register of local firms and workers is being developed for expressions of interest in construction work. (para 4.5.90)

3.129 NCC comments in the LIR that –

One of the main socio-economic impacts is the potential job creation during both construction and operation. The County Council is keen to maximise the benefits of securing employment and training opportunities for residents of Northumberland, through new developments. The proposed development has the potential to assist with this and it is hoped that the developer would work with the Council to maximise the employment benefits for Northumberland residents. (REP29, para 7.31)

3.130 This has been the subject of some local scepticism, Mr and Mrs Crossland commenting in their Written Representation (REP27) that –

This is a large scale development, which will be highly automated, but not creating many jobs for the local community.

3.131 During the course of the examination the applicant put forward a provision for a Workforce Development Strategy, expressed as Requirement 46 of the draft DCO. This would oblige the applicant to have such a strategy approved by NCC before the development could commence, and would include the involvement of the local Community Liaison Group. The ExA considers that this should maximise the opportunities for local employment benefit from the scheme.

3.132 The ExA concludes that the proposed development has some potential local socio-economic benefits that the final proposal should capture.

*Traffic and transport*

3.133 Chapter 13 of the ES is a Transport, Traffic and Access Report (APP58), supported by a Transport Assessment (TA) (APP108) which considers the proposed development in terms of the surrounding highway network. The TA was prepared in accordance with the Department of Transport *Guidance on Transport Assessment* (GTA), published in 2007, and complies with 5.13.3 of EN-1. The methodology was also agreed with NCC.

3.134 The draft DCO contains standard measures to mitigate the impacts of the proposed development during construction and operation. This is strengthened by Requirement 43, requested by the Highways Agency (HA), to ensure proper monitoring of heavy goods

vehicles (HGV) movements and to impose a traffic mitigation plan if a specified threshold is reached.

- 3.135 Requirement 14 is a provision for a construction traffic routing and management plan. This provides that no part of the authorised development may commence until written details of the construction phase Traffic Management Plan (TMP) have been submitted to NCC as planning authority and highway authority. Prior consultation with HA is also required.
- 3.136 A construction travel plan is required under Requirement 19, which states that no part of the authorised development may commence until such a travel plan is in place and then must thereafter be adhered to. Following the Specific Issue hearing the applicant consulted further with NCC and put forward a revised Requirement 19(2) which specifies the detail that should be included in the plan to ensure that it is meaningful, measurable and enforceable.
- 3.137 In the operational phase traffic would be regulated by Requirement 37, which stipulates that no part of the authorised development may be brought into first commercial use until a framework travel plan has been agreed with NCC as planning and highway authority and the Highways Agency. Based on that framework a full travel plan should be submitted within three months of the authorised development being brought into first commercial use and it should thereafter be observed throughout the lifetime of the development unless alterations or variations are agreed. In the view of the ExA this meets the requirements of para 5.13.4 of EN-1.
- 3.138 Because particularly of the concerns expressed by local residents about the impacts on North Blyth, Sleekburn and Cambois access and traffic was made part of the initial identification of principal issues. The ExA in particular was concerned that although the reports concluded, with NCC's agreement, that –

All impacts on the local highway network are considered to be Neutral or Slight, and thus not significant, and no mitigation measures are proposed beyond the construction phase Traffic Management Plan and Travel Plan for the construction and operational phases. (APP58, 13.14.14)

- the impact on local residents of the additional HGVs carrying 20% of the plant's fuel feed-stock and other plant-associated HGVs might in practice be felt more

heavily.

- 3.139 This is suggested as well by the finding in the report that -

The magnitude of impact on pedestrian amenity, fear and intimidation, from Table 13.3, is considered to be Moderate. This is a balanced view taking account of the large maximum increase in HGV flows, which could be considered a 'Major' impact, offset by the temporary nature of the 'worst case' HGV flow, the industrial character of the roads and the similar nature of existing port activities. In essence, the large percentage increase in HGV flows would not be expected to result in significant issues on the local highway network. No further mitigation measures are considered necessary. (APP58, 13.10.48)

- 3.140 This concern was voiced (para 11 of REP27) by local residents Mr and Mrs Crossland –

Although there are road alterations at the immediate roundabout for access to the plant, there is no provision to make better or more tolerable the detrimental impact of speeding (and they do speed, several have been reported) heavy lorries and associated diesel fumes along the 1 km, high fenced, access road to the site, Alcan terminal and the village of North Blyth.

- 3.141 The applicant has responded to these concerns by putting forward a unilateral undertaking (made with the Port of Blyth) to NCC (AS12) which includes provision for improved crossings and minor highways works, which would include consultation on these points with the established local Community Liaison Group.
- 3.142 A separate s.278 agreement between the applicant and NCC covers the road works associated with the cable laying to the grid connection.
- 3.143 The ExA is satisfied that the transport and traffic impacts of the proposed development, as mitigated by the measures in the draft DCO and the unilateral undertaking, should now be acceptable, and that the criteria set out in Section 5.13 of EN-1 and para 2.5.25 of EN-3 have been met.

### *Waste and Residue Management*

- 3.144 Section 5.14 of EN-1 and para 2.5.64 *et seq* of EN-3 deal with requirements for the management of waste, and 2.5.64 *et seq* of EN-3 with residue management.
- 3.145 The two main residues from the plant once operational would be fly ash and bottom ash. The proposals for their management, storage on site and disposal are set out in section 4.4 of Chapter 4 of the ES (APP48), paras 4.4.1 to 4.4.7.
- 3.146 Requirement 35 in the draft DCO stipulates that an appropriate site waste management plan must be approved by NCC as the local planning authority before first commercial use.
- 3.147 The movement of the ash off-site would be regulated by Requirement 37, the Travel Plan and Traffic Management Plan.
- 3.148 The bottom ash would be used as engineering aggregate or for the manufactures of construction blocks (APP48, para 4.4.3)
- 3.149 In response to a first round written question the applicant stated that -
- The fly ash resulting from the biomass fuel combustion process has the potential to be a useful by-product. The Applicant is investigating the feasibility of utilising ash residues as an alternative to disposal of the ash via landfill. It is the desire of the Applicant to re-use residues rather than to dispose of these to landfill, thereby following the principles of the 'Waste Hierarchy'. As yet no alternative use of the fly ash has been confirmed. (REP35, Q58)
- 3.150 Fly ash is a hazardous material and its management would be part of the Environmental Permit to be issued by EA. EA have not identified this as a potential problem in relation to the issue of the permit.
- 3.151 The ExA concludes that the requirements of section 5.14 of EN-1 and 2.5.71 to 2.5.83 of EN-3 have been met adequately and appropriately, and that there are no issues relating to the management of waste or residue that should be an obstacle to the granting of development consent.



### *Water Quality and Resources*

- 3.152 Paras 2.5.84 to 2.5.87 of EN-3 deal with possible impacts on water quality and resources.
- 3.153 Matters relating to water quality and resources are set out in Chapter 4 of the ES (APP48).
- 3.154 The proposed development will use water from the River Blyth Estuary for the cooling system, extracted through piping through the existing river wall (APP48, para 4.5.57). Fish will be protected from entering the intake through the use of an intake system protected by a wedge-wire screen. (para 4.3.68) The volume of water to be extracted is small (3.77m<sup>3</sup>/s). It will be discharged approximately 10° C warmer into the North Sea.
- 3.155 The discharge will occur at a minimum depth of approximately 8m and will be designed to induce good mixing so as to minimise the impact on marine wildlife (4.3.67). An assessment of the potential impacts on the local inshore fisheries (APP83, Appendix 4.12) has been carried out. From this study it has been determined that the water cooling system and river wall works should have no significant effect on current commercial fishing activities.
- 3.156 The applicant states that the small amount of process effluents would comprise boiler blow-down (for removal of impurities), neutralised water from the water treatment plant, the emptying of the steam water circuit during maintenance, and other minor discharges. This process water would be discharged, with the cooling water, to the North Sea. The discharge would comply with the limits agreed with EA as part of the Environmental Permit. (APP48, 4.4.8)
- 3.157 A surface water drainage strategy discharging to the North Sea is set out in para 4.4.13 of APP48.
- 3.158 The boiler water would be supplied by Northumbrian Water from the town supply. (4.4.20)
- 3.159 EA has raised no concerns relating to the sourcing or discharge of water from the proposed development. The ExA believes that these issues are addressed adequately in the application, and that the considerations set out in section 5.15 of EN-1 and paras 2.5.84 *et seq* of EN-3 are covered in full.

*Biomass and waste combustion*

- 3.160 Section 2.5 of EN3 addresses the critical issue of the sourcing of biomass fuel feed-stock.
- 3.161 Para 2.5.7 of EN-3 specifies that the sustainability of the biomass to be used in a biomass-fuelled generating station is a relevant and important consideration for the decision-maker.
- 3.162 This was identified as a principal issue. It was the subject of a series of first-round written questions and then discussed at some length in the first Specific Issue hearing on the draft DCO. The ExA was concerned to establish how the applicant intended to maintain the commitment to sustainable fuel feed-stocks over the life of the project. An alternative definition of sustainable feedstock to that in draft Requirement 44, derived from the recent s.36 consent for Avonmouth, was put forward for comparison.
- 3.163 The applicant has set out in its response to the first round questions (REP36) and written submission following the first DCO hearing (HEA5) a detailed explanation of the current context – the consultation on sustainability standards for solid biomass fuels launched by DECC in September 2012 – and how its proposed Requirement would work.
- 3.164 The applicant observes that when the new sustainability criteria are announced they will necessarily apply to the proposed development for the purpose of receiving Renewable Obligations certificates (ROCs). If the applicant failed to comply with the criteria then it would not be eligible to receive ROCs for its generation of renewable electricity.
- 3.165 The applicant states that ROCs form a fundamental part of the business case for the proposed development, so that there is a powerful incentive to comply with the criteria.
- 3.166 In addition, however, the applicant has proposed a further measure in Requirement 44 in the final draft DCO. Under this Requirement the applicant must submit to NCC as the local planning authority a Fuel Sustainability Report (FSR) within twelve calendar months of first commercial use of the proposed development. The FSR would have to provide the same level of information on sustainability of feedstock that the applicant would be required to provide if it was claiming ROCs. The applicant would also be required to

report whether financial assistance had been claimed. The Requirement also specifies the production of further FSRs on an annual basis throughout the operational life of the plant.

- 3.167 Thus by virtue of this requirement the proposed development would be committed to meeting the applicable sustainability criteria whether it was receiving ROCs or not. This should ensure that the proposed power station will burn sustainably sourced biomass fuel throughout its operational life. It thus addresses the concern in para 2.5.7 of EN-3 that some biomass projects might be able to operate outside the ROCs regime for some reason and thus not be subject to the sustainability requirements.
- 3.168 The ExA considers that the proposed safeguard in Requirement 44 is adequate and appropriate, and would meet the objectives of EN-3 in this regard. A possible alternative approach is, however, set out in paras 6.73 to 6.79 below.

## 4 CONCLUSIONS

- 4.1 The ExA considers that the application conforms to the policy objectives and general requirements set out in the two relevant NPS, EN-1 Overarching Energy and EN-3 Renewable Energy Infrastructure, and meets their specific requirements for a biomass generating plant.
- 4.2 The ExA considers that the matters raised by NCC in their LIR are not an obstacle to the granting of development consent. In particular (see para 2.31 *et seq* above) the proposed development –
- (a) conforms with extant local plan policies and will support the continued development of the Port of Blyth
  - (b) given its historical and current industrial setting, will not have a significant visual impact at the landscape scale
  - (c) is not assessed as posing a potential health risk; potential sources of nuisance such as dust and noise are capable of mitigation and management through appropriate Requirements, and NCC has no outstanding objection to any of the provisions in the Requirements
  - (d) subject to the mitigation measures proposed in the Requirements, in the view of NE is not likely to have an adverse impact on the European sites or other ornithological assets
  - (e) subject to the mitigation measures proposed in the Requirements, should not in the view of NE have an impact on terrestrial ecology
  - (f) would increase the traffic to North Blyth, but within tolerable limits and subject to mitigation and management through the Requirements both proposed by the applicant and requested by HA and agreed by NCC. The intended additional s.106 agreement to carry out additional works on the access roads should reduce the adverse impacts on local residents
  - (g) would undoubtedly reduce the residential amenity of North Blyth and the nearest part of Blyth: this will be a large development in relatively close proximity. The ability of NCC to consider final design details and the commitment to secondary mitigation should help to reduce these impacts, but they would still be felt by the residents
  - (h) would not have any adverse effects on cultural heritage

- (i) should bring some socio-economic benefits in terms of local job creation, which would be monitored through the workforce development strategy.
- 4.3 The ExA considers that the granting of development consent would not lead to the United Kingdom Government being in breach of its international obligations.
- 4.4 It is for the Secretary of State to decide whether an appropriate assessment is necessary under the HRA, but NE considers that there should be no adverse impact on any European Site and that the ES contains all the information required and the ExA concurs.
- 4.5 The ExA can see no grounds for concluding that deciding the application in accordance with the relevant NPSs would lead to the Secretary of State being in breach of any legal duties.
- 4.6 In terms of the overall balance, the ExA considers that the test in s.104(7), that the adverse impacts of the development should not outweigh its benefits, is met. The development undoubtedly would have some adverse impacts, but these would be experienced by a relatively small number of residents. That has to be set against the wider benefit of the contribution that the proposed development should make to achieving the national objectives of sustainability through renewable energy; and its particular contribution to the base load component of the renewable energy capacity sought through national policy. Nor are all the local impacts adverse: the proposed development would also bring some economic benefit to the immediate area.
- 4.7 Overall, therefore, the ExA considers that there is no reason why in accordance with s.104 the Secretary of State should not grant consent to the application as developed through this examination, and recommends that consent should be given.**
- 4.8 The following sections deal with the Compulsory Acquisition of land or of interests in land and the Development Consent Order necessary to give effect to a consent.

## 5 COMPULSORY ACQUISITION

### *The request for Compulsory Acquisition Powers*

- 5.1 The Statement of Reasons (APP36; and Erratum, REP8), the Book of Reference (APP38) and the Land Plan (APP6) were submitted as part of the original application, and remained unmodified during the examination.

### *The purpose for which the land is required*

- 5.2 The specific purposes for which each parcel of land is required are set out in para 8.17 of the Statement of Reasons. As of the end of the examination process, none of the proposed compulsory acquisition is contested.
- 5.3 The status of land tenure in the area covered by the order land is generally problematic, with the Coal Authority having presumed rights to coal deposits and the Trustees of Viscount Ridley's 1986 Settlement (TVR1986) presumed rights to other mineral deposits. The applicant has adopted a precautionary approach to the identification of interests in land.

#### *Parcel 1: Blyth Harbour Commission (the Port of Blyth), The Coal Authority and TVR1986*

- 5.4 This constitutes the principal site of the proposed development. A lease has been secured from the Port of Blyth, but it is included so that any other rights can be over-riden and to ensure that any minerals rights are made subject to the statutory minerals code.

#### *Parcel 2: Blyth Harbour Commission, Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.5 The applicant seeks to acquire subsoil rights beneath the railway sidings serving the port for the construction of the cooling water outfall.

#### *Parcel 3: NCC as highway authority, Blyth Harbour Commission, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.6 The applicant seeks to acquire subsoil rights beneath North Blyth Road for the construction of the cooling water outfall.

#### *Parcel 4: Network Rail Infrastructure Ltd, DB Schenker rail (UK) Ltd (open access agreement), GB Railfreight Ltd (open access agreement), Freightliner Ltd (open access*

*agreement, TVR1986 and Unknown (also in respect of presumed mineral rights).*

- 5.7 The applicant seeks to acquire subsoil rights beneath the railway (part of the national network) serving the port for the construction of the cooling water outfall.

*Parcel 5: Alcan Aluminium UK, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.8 The applicant seeks to acquire subsoil rights beneath the dunes and the foreshore for the construction of the cooling water outfall.

*Parcel 6a: The Crown Estate (TCE) and the Coal Authority*

- 5.9 The applicant is negotiating with TCE for a licence for subsoil rights beneath the foreshore for the construction of the cooling water outfall.

*Parcel 6b: The Coal Authority and TVR1986*

- 5.10 The applicant seeks to acquire subsoil rights under the Rockers (a small group of rocks) for the construction of the cooling water outfall.

*Parcel 6c: TCE and the Coal Authority*

- 5.11 The applicant is negotiating with TCE for a licence for seabed rights beneath the foreshore for the construction of the cooling water outfall.

*Parcel 7: NCC as highway authority, Blyth Harbour Commission, the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.12 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts.

*Parcel 8: NCC as highway authority, Blyth Harbour Commission, the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.13 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts.

*Parcel 9: NCC as highway authority, Blyth Harbour Commission, the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.14 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts under part of North Blyth Road.

*Parcel 10: : NCC as highway authority, Craig Goodman, the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.15 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts under part of North Blyth Road.

*Parcel 11: NCC as highway authority, Intercell Ltd, Anthony Hodgson and Bank of Scotland, Paul Hedley, Alan and Yvonne Tibbs, RWE Npower PLC, Unknown (all in respect of highway interests), the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.16 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts under part of North Blyth Road.

*Parcel 12: NCC as highway authority, RWE Npower PLC (in respect of highway interests), the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights)*

- 5.17 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts under part of North Blyth Road.

*Parcel 13: NCC as highway authority, Network Rail Infrastructure Ltd, DB Schenker Rail (UK) Ltd, Unknown, Blyth Harbour Commission (in respect of highway interests), the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights).*

- 5.18 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts under part of North Blyth Road. This includes the airspace previously occupied by a railway bridge.

*Parcel 14: NCC as highway authority, RWE NPower PLC (in respect of highway interests), the Coal Authority and TVR1986*

- 5.19 The applicant seeks to acquire rights to lay the cables to the grid connection in underground ducts under part of North Blyth Road.



*Parcel 15: RWE NPower PLC (as land owner), the Coal Authority, TVR1986 and Unknown (also in respect of presumed mineral rights).*

- 5.20 The applicant seeks to acquire rights to enter the site of the former Blyth Power Station to lay the cables to make the grid connection at the existing sub-station.

*The Requirements of the Planning Act 2008*

- 5.21 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.
- 5.22 Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.<sup>14</sup>
- 5.23 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not mean that the compulsory acquisition proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherence in the decision-making process.
- 5.24 Section 123 requires that one of three conditions is met by the proposal<sup>15</sup>. The ExA is satisfied that the condition in s.123(2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 5.25 A number of general considerations also have to be addressed either as a result of following applicable

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<sup>14</sup> Guidance related to procedures for compulsory acquisition DCLG February 2010

<sup>15</sup> (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

guidance or in accordance with legal duties on decision-makers –

- all reasonable alternatives to compulsory acquisition must be explored
- the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
- the ExA must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

***Crown land and s.135***

- 5.26 Interests in Parcels 6A and 6C are held by the Crown. Interests in Parcel 6A are also held (otherwise than by or on behalf of the Crown) by the Coal Authority and in Parcel 6C (otherwise than by or on behalf of the Crown) by the Coal Authority and Five Quarter Energy Ltd.
- 5.27 Crown interests are excepted from the land described in the Book of Reference and the DCO will not therefore authorise the compulsory acquisition of interests held by or on behalf of the Crown. The Crown is also further protected by virtue of Article 30. This article prevents compulsory acquisition of interests in Crown land unless the appropriate Crown authority consents. It also prevents the undertaker interfering with any land or rights belonging to the Crown or a government department (in trust for the Crown) without the consent of the Crown Estate Commissioners or relevant government department respectively.
- 5.28 Notwithstanding the protections in Article 30, to meet the requirements of s.135 (1), the appropriate Crown authority (in this case the Crown Estate Commissioners) must consent to the inclusion of provisions authorising compulsory acquisition of interests held by the Coal Authority and Five Quarter Energy Ltd. To meet the requirements of s.135 (2), the consent of the appropriate Crown authority (in this case the Crown Estate Commissioners) will be required to the extent that provisions in the DCO apply in relation to Crown land. As the applicant has been in discussion with the Crown Estate, and licences by agreement are likely to be obtained in due course, it is considered that there should be no impediment to the Secretary of State obtaining those consents.

*How the ExA examined the Compulsory Acquisition issues*

- 5.29 The ExA asked questions on the progress of the applicant's negotiations in both rounds of written questions (PD7 Q59; PD12 Q1). The ExA saw all the land sought during the accompanied site visit.
- 5.30 One of the affected parties – Network Rail Infrastructure Ltd - gave notice under s.92(3)<sup>16</sup> of their wish to be heard at a compulsory acquisition hearing. Accordingly a hearing was scheduled for 6 December 2012 in Blyth. In the event, as negotiations between them and the applicant developed, none of the affected parties saw a need to attend the hearing, but the ExA was able to use the hearing to acquire further clarification of the applicant's case.

*Statutory Undertakers and s.127 and s.138*

- 5.31 Three statutory undertakers were among the affected persons – Network Rail Infrastructure Ltd, RWE NPower PLC and the Blyth Harbour Commissioners (Port of Blyth) – all of whom had made representations. In these circumstances there was the possibility that the provisions of s.127 would become engaged.
- 5.32 The applicant applied to the appropriate Secretaries of State for the issue of certificates under s.127 in January 2012 (PD25 to PD31) in relation to Network Rail, and (PD33 to PD39) in respect of RWE NPower. The necessary appointments were made (PD32, PD40), but in the event the applicant reached a negotiated agreement with Network Rail and RWE Npower and all three statutory undertakers confirmed that they withdrew their representations – Port of Blyth<sup>17</sup> (PD51), RWE NPower (PD52) and Network Rail (PD53) – before the end of the examination. Thus s.127 is not engaged.
- 5.33 In relation to s.138, the applicant has amended Article 22 of the draft DCO to indicate that the power to extinguish rights of statutory undertakers or to reposition or relocate apparatus is no longer sought. Thus s.138 is not engaged either.

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<sup>16</sup> (2) The Examining authority must fix, and cause each affected person to be informed of, the deadline by which an affected person must notify the Secretary of State that the person wishes a compulsory acquisition hearing to be held.

(3) If the Secretary of State receives notification from at least one affected person before the deadline, the Examining authority must cause a compulsory acquisition hearing to be held.

<sup>17</sup> Port of Blyth's representation was made in support of the application, but PA2008 at the time of the examination did not distinguish between representation and objection.

### ***The Applicant's Case***

- 5.34 The applicant's case is set out first in the Statement of Reasons (APP36) and re-stated in the written submission following oral evidence at the compulsory acquisition hearing (HEA45).

#### *The general case*

- 5.35 The applicant claims that there is a compelling case in the public interest for compulsory acquisition powers. The acquisitions support a NSIP that is compliant with NPSs EN-1 and EN-3. There is a need for sustainably fuelled generating stations and the proposed acquisition is the minimum required to ensure that the proposed development can proceed in a reasonable commercial timescale, whilst respecting those parties holding an interest in the Order lands. (HEA45, para 4.1)

#### *Specific cases*

- 5.36 The main interest in Parcel 1 is the interest of the Blyth Harbour Commission (the Port of Blyth), with whom the applicant states agreement has been reached. It includes also the Coal Authority, a Crown interest, with whom a pillar of support is being negotiated. The Trustees to the Viscount Ridley's 1986 Settlement (TVR1986) had apparently not been able to prove conclusively to the applicant their title to the other minerals before the end of the examination.
- 5.37 Thus even though the applicant has concluded a lease agreement with the Port of Blyth, it still seeks compulsory acquisition powers to ensure that the Minerals Code applies to Parcel 1 and the generating station is not undermined. The applicant states that it is essential that such powers are provided as without this comfort it is possible that the scheme could not be funded. (HEA45, para 4.5)
- 5.38 All of the other Order lands are required only in relation to the granting of new rights.
- 5.39 In the case of Parcels 2 to 5, 7 and the Crown interests within Parcels 6A and 6C, these relate to the proposed cooling water outfall. These pipes will be directionally drilled from the site into the Order lands, so there should be no surface disturbance.
- 5.40 Parcels 7 to 14 are all highways land, where the applicant seeks to lay the cabling to the grid connection in Parcel 15. The applicant states that it intends to rely on the powers under Article 21, and will not seek to acquire

compulsorily anything relevant to scheduled interests in the highways subsoil<sup>18</sup>. (HEA45, 12.2.9)

- 5.41 The s.278 agreement between the applicant and NCC had not been signed by the close of the examination. The ExA recommends that the Secretary of State should be satisfied that it has been concluded before granting consent.
- 5.42 Parcel 15 is now the subject of an option agreement between the applicant and RWE NPower (PD54) under which the applicant would not exercise the powers of compulsory acquisition while that option agreement remains open, valid and in force. It is on the strength of this agreement that RWE NPower has withdrawn its representation.
- 5.43 As the applicant makes clear in its final submission (REP77, para 7.1), despite the success of the negotiations it remains the applicant's position that it requires compulsory acquisition powers to be available for all of the Order lands. Even where agreement has been reached, the relevant plots need to remain in the Book of Reference, as minor interests in land still need to be dealt with by statutory process.

#### *Funding*

- 5.44 The applicant has included the necessary funding statement as part of the application (APP37).
- 5.45 The guidance relating to funding statements says -
- This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required<sup>19</sup>.
- 5.46 In section 2 of APP37 the applicant explains the relationship between itself (North Blyth Energy Ltd) and the parent company, RES, and that project financing would be sought as and when development consent is given, making the point that this is standard practice for a scheme of this nature. The applicant also gives some examples of recent success by RES in raising project finance.

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<sup>18</sup> Article 21.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

<sup>19</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition, para 33

- 5.47 In section 3 the applicant explains the particular approach that it has taken to ensure that any claims for compensation, including blight, fall on the parent company RES if the applicant itself cannot for any reason meet them. The application includes (APP37) a Funding Statement which shows audited financial reports for RES UK & Ireland Ltd for the year ending 31 October 2011: in the ExA's judgment these demonstrate that the parent company should be able to meet any call arising from the invoking of the guarantee.
- 5.48 This guarantee is secured through an agreement between the applicant and RES (included in APP37) which is made specifically subject to the Contracts (Rights of Third Parties) Act 1999. Clause 7.2.1 of the agreement allows the applicant to transfer its obligations only with the consent of the Secretary of State.

***The ExA's consideration of the case***

- 5.49 As stated in para 5.24 above, the test set in s.123(2) has been met by the application.
- 5.50 The test in s.122(2) is that the land –
- (a) is required for the development to which the development consent relates,
  - (b) is required to facilitate or is incidental to that development, or
  - (c) is replacement land which is to be given in exchange for the order land under section 131 or 132
- 5.51 No replacement land is involved in this case.
- 5.52 In the ExA's view the applicant has shown clearly and adequately the reasons why the parcels of land identified are required, how they would be used in the proposed development, and why the land identified is the minimum necessary to carry out the development.
- 5.53 There has been no suggestion from any of the affected persons that there are alternative schemes (for the outfall or the cabling) that would have a lesser impact on their interests. RWE NPower's concerns related primarily to the method of installation, and these have presumably been resolved by the option agreement.
- 5.54 The ExA therefore concludes that all the land identified meets the test in s.122(2)(a) as being required for the development to which the development consent relates.

- 5.55 The test in s.122(3) is that there is a compelling case in the public interest for the land to be acquired compulsorily. In the ExA's view there are two aspects to this.
- 5.56 The first is whether there are alternatives to compulsory acquisition. The attempt of the applicant to reach a negotiated settlement with many of the parties is a relevant and important consideration. It shows that the applicant has sought to obtain the willing consent of the affected parties. It also shows that a complete negotiated solution is not possible, primarily because of the uncertainties as to who owns what under the surface of the land, and the need to be able to resort to compulsory acquisition to clear title.
- 5.57 The second is whether the case in the public interest is 'compelling' in the sense that the public benefit outweighs private injury. It is clear in this case that most if not all the injury has been negotiated away; but the over-riding consideration is that the proposed development is a significant contribution to achieving the objectives of EN-1 and EN-3.
- 5.58 The ExA therefore concludes that a compelling case in the public interest has been demonstrated adequately. The ExA also concludes that the interference with human rights is lawful, in the public interest and proportionate.
- 5.59 The ExA also concludes that the funding arrangements put forward by the applicant, backed by the agreement with RES, are adequate, appropriate and enforceable.

## 6 DRAFT DEVELOPMENT CONSENT ORDER AND DEEMED MARINE LICENCE

- 6.1 The consent for the proposed development is sought in the draft DCO and the draft DML.
- 6.2 These documents set out the authority to be given to the applicant, including the permanent or temporary compulsory acquisition of land and interest in land, the extent of the works to be carried out, the further approvals that are required before particular works or works in general can commence, the protective provisions necessary to safeguard the interest of other parties and the requirements that are imposed on the exercise of the powers granted. The applicant has accepted obligations to facilitate the development and these are set out in the two s.106 agreements and the draft s.278 agreement.
- 6.3 The draft DCO and draft DML as submitted with the application documents are at APP34. The final version (the seventh) submitted by the applicant on 1 February 2013 is at REP76. The original Explanatory Memorandum is at APP35; the final version is at REP67, although further commentary is to be found in the applicant's final submissions at REP77.
- 6.4 Because of the critical importance of the DCO and DML the ExA held two Specific Issue hearings as part of the examination. The first was held on 11 October 2012, essentially to clarify the provisions of the draft DCO and DML and to understand how they were intended to work. The second was held on 9 January 2013, with the main purpose of considering the adequacy of the draft DCO and DML in the light of evidence brought forward and issues raised during the examination.

### ***The draft Order***

- 6.5 The applicant's final version of the draft DCO is also included with this Report. By the end of the examination no parts of the Order were contested by interested parties or affected persons. (Interested parties such as the North Tyneside Friends of the Earth opposed consent rather than specific provisions in the draft Order.) The ExA considers that this version is appropriate, proportionate and enforceable and does not propose further changes.
- 6.6 The application was made before the Localism Act 2011 came into force, which *inter alia* repealed the requirement to have regard to the model provisions. The



question of whether the model provisions were an appropriate basis for the draft Order was not raised during the examination. The ExA considers that the fact that the model provisions are no longer part of the legal framework does not make them any less sensible as a point of reference and comparison for the drafting of provisions.

- 6.7 In its final form the draft DCO has 31 Articles, a net 46 Requirements and five Schedules.

*Works to be authorised*

- 6.8 Schedule 1 is a description of the works to be authorised, identifying the nationally significant infrastructure project as an electricity generating station located on the eastern side of Battleship Wharf, Port of Blyth, with a nominal gross electrical output capacity of up to 99.9 MW fuelled by biomass, which constitutes Work No 1. The associated development is set out in Works No 2 to 9, which include the modifications to the river wall associated with the water intake, the grid connection, a new emergency egress and the consequential changes to the Port of Blyth facility.
- 6.9 Schedule 2 relates to the streets that would be subject to street-works. These are also the subject of the s.278 agreement between the applicant and NCC.

*Deemed Marine Licence*

- 6.10 The draft DML constitutes Schedule 3 of the draft Order.
- 6.11 Since the operation and enforcement of the DML would be the responsibility of the MMO, the ExA throughout the examination placed a high degree of reliance on the MMO's views.
- 6.12 The SoCG (SoCG5) between the applicant and the MMO records that following discussion between the two parties the applicant had recast the original draft in the form requested by the MMO, and that that all of the licensable activities included in the application which are to be carried out in the marine area to implement and operate the Project are authorised by the provisions set out in the draft DML.
- 6.13 In its final form the DML includes a minor amendment requested by Trinity House (AS8) to Condition 3(6), Aids to Navigation.
- 6.14 MMO's satisfaction with the draft DCO in its final form is recorded in REP79 dated 30 January 2013.

### *Protective Provisions*

- 6.15 Schedule 5 contains the only Protective Provisions sought, by Network Rail.
- 6.16 This is in the form negotiated between the applicant and Network Rail (PD42), and the ExA has not found any reason to change it.

### **Articles**

#### *Article 1*

- 6.17 The definitions follow the model provisions, but exclude those that are not relevant to the construction and operation of a biomass-fuelled generating station.
- 6.18 The extent of the definition of 'maintain' has been reduced during the course of the examination; the meaning is now limited to inspection, maintenance and repair.

#### *Article 4*

- 6.19 This Article is not based on the model provisions. It reflects the wording accepted by the IPC in its decision on the Rookery South Resource Recovery Facility Order.
- 6.20 Article 4 seeks to apply the procedures for the discharge of planning requirements, and provides the right of appeal against either the refusal or non-determination of any such application for approval. The applicant argues that this mechanism is appropriate to deal with the situation where the undertaker considers that the approval has been refused unreasonably or that approval has been delayed. NCC is content with this provision, and the ExA considers it appropriate.

#### *Article 6*

- 6.21 This Article creates a power not in the model provisions to operate the generating station once constructed. The ExA agrees that this is appropriate and necessary.

#### *Article 7*

- 6.22 This Article deals with the conditions under which the benefit of the undertaking could be transferred. Its key provisions are that the Secretary of State's consent would not be required if the transferee already held a licence under the Electricity Act 1989; and that no transfer of powers of compulsory acquisition can be made unless the transferee holds such a licence. The

ExA considers the first of these provisions to be reasonable, and the second to be necessary.

*Article 8*

- 6.23 This is based on the model provision and provides a defence in certain circumstances against proceedings under the Environmental Protection Act 1990 in respect of statutory noise nuisance. The ExA has considered this in relation to Section 4.14 of EN-1 and considers that this should reasonably apply in this case.

*Article 14*

- 6.24 This is based on the model provisions but provides for the incorporation of the Statutory Minerals Code set out at Schedule 2 of the Acquisition of Land Act 1981 to be incorporated into the Order. The proposed development would be on a site historically associated with the extraction of coal and other minerals, and the applicant argues that such protection is necessary. The ExA concurs with that view.

- 6.25 The Book of Reference excludes the operation of compulsory acquisition (and the Minerals Code) for those parcels of land where control over the subsoil is not required by the applicant.

*Article 22*

- 6.26 In this Article the model provision has been amended so that although the undertaker is authorised to compulsorily acquire land or rights over land belonging to statutory undertakers shown as set out in the Book of Reference, it does not authorise extinguishment of rights of statutory undertakers, or the removal or repositioning of apparatus belonging to statutory undertakers. As a result, s.138 of the Planning Act 2008 is not engaged.

*Article 30*

- 6.27 This is not a model provision. Its intent is to protect the Crown's position in relation to its own rights, and to ensure that the Crown's written consent is required to any interference with those rights as a result of the granting of the Order.

- 6.28 The Article is taken from precedents in Transport and Works Act 1992 Orders for offshore wind farm developments, including Scarweather Sands<sup>20</sup>.
- 6.29 The Article also prevents any interest in Crown land being compulsorily acquired without the appropriate Crown authority consent.

### **Requirements**

#### *Requirement 3*

- 6.30 Requirement 3 deals with detailed design, and in its final form addresses various points raised during the examination.
- 6.31 This requirement would give NCC as the local planning authority the duty to approve final detailed design, but subject to the principles laid down in the design and access statement and the ES. The design and access statement itself reflects the input from the Design Council-CABE design review, but the requirement now allows NCC to consider the fine-grain detail of the final designs.
- 6.32 NCC makes the point in its LIR that they are mindful of the potentially 'oppressive' impact on the settlement of North Blyth. In the Specific Issue hearing on landscape design and visual impact NCC affirmed to the ExA that it was confident that it had access to the necessary expertise to consider design details.
- 6.33 The ExA considers that in its final form this requirement is appropriate and necessary.

#### *Requirement 8*

- 6.34 This, dealing with contaminated land and groundwater, follows the model provisions, but includes an additional requirement to suspend work and carry out a risk assessment in the event that further contamination is found present at the site during construction. This has been included to reflect the conclusions of the ES in paragraph 15.6.5.<sup>21</sup> (APP60)

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<sup>20</sup> S.I.2004 No 3054

<sup>21</sup> 15.6.5 A site investigation will be undertaken, prior to construction, to identify the presence of contamination across the Application Site and identify the need for further site remediation (see DCO Requirement 8). As the Facility Site was remediated in 1993 in conjunction with NCC (refer to Appendix 15.1), it is not expected that extensive areas of contamination will be found. It is possible that some areas of contaminants, if found, would need to be remediated (see DCO Requirement 10). Where encountered these materials will be remediated on site or removed from the Application Site to a suitably licensed disposal facility in accordance with a proposed Requirement within the DCO application (see DCO Requirements 12 and 9) for a

*Requirement 9*

- 6.35 This addresses the disposal of contaminated materials. It does not follow a model provisions, but also reflects the conclusions of the ES in para 15.6.5.(APP60) It provides that the authorised development shall not be commenced until approval by NCC in consultation with EA of a scheme for the disposal of contaminating material arising during construction.

*Requirement 10*

- 6.36 This deals with earth-works and remediation. Again, it does not follow a model provisions, but also reflects the conclusions of the ES in para 15.6.5.(APP60). It provides that the Construction and Environmental Management Plan (CEMP) required to be approved by NCC before the authorised development is commenced should reflect the measures specified in the ES for earth-works and remediation.

*Requirement 12*

- 6.37 The requirement for a Construction and Environmental Management Plan (CEMP) was originally set out in Model Provision 19. The requirement as drafted specifies a high level of detail as to what the CEMP must cover, but also refers to the need to comply with the principles established in Chapter 4 of the ES.(APP48) The ExA considers that this strengthens the CEMP, and that the requirement as developed is appropriate, necessary and enforceable.

*Requirement 13*

- 6.38 This requirement deals with dust and dirt during the construction phase. It is not a model provision but reflects the findings of para 7.8.4 of the ES<sup>22</sup>. It provides that the authorised development shall not be commenced until approval by NCC of a scheme for wheel cleansing facilities for heavy commercial vehicles and mobile plant exceeding three tonnes and a scheme for suppression of dust. It also requires the sheeting of

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CEMP to be agreed with NCC and the Environment Agency prior to the commencement of construction. Alternatively, such areas may possibly be left in-situ beneath areas of developed hardstanding, which again will be agreed with the Local Authority and the Environment Agency.

<sup>22</sup> 7.8.4 Dust generation and dispersion during construction and decommissioning will be minimised through good practice measures and monitoring agreed within the CEMP during construction (see DCO Requirement 12) and the Site Closure plan during decommissioning (see DCO Requirement 45). The mitigation measures to be agreed within these plans will aim to prevent dust from being dispersed off-site and, thereby, protect nearby properties and other receptors from significant dust impacts (see DCO Requirement 13).

heavy commercial vehicles carrying loose cement or soil in and out of the site.

*Requirement 14*

- 6.39 This is not a model requirement and has been included to reflect section 13.5 of the ES<sup>23</sup>. It provides that the authorised development shall not be commenced until approval by NCC of a construction phase traffic management plan (which must contain a number of specific matters listed in the requirement); and that notices are to be erected specifying agreed routes for construction traffic.

*Requirements 15 and 41*

- 6.40 These two provision deal with noise generation during the construction and operational phases respectively, unlike the model provision which is generic. In both cases they specify a detailed methodology to be followed and standards to be achieved.
- 6.41 Following discussion between the applicant and NCC there is specific reference in Requirement 41 to the background noise levels assessed in the ES.
- 6.42 The ExA considers that these requirements, as developed, are necessary and appropriate.

*Requirement 17*

- 6.43 This is not a model provision. It provides for a survey of unexploded ordnance (UXO) to be carried out before construction can commence. It is included –
- ... because of the identified risk that UXO may be on site given its former history as an area of shipbuilding and being in consequence a target for air raids. (REP67)

*Requirement 18*

- 6.44 The applicant does not propose to use the model provision relating to terrestrial ecology, and this point is not disputed by Natural England.

*Requirements 19 and 37*

- 6.45 These two requirements develop the model provision relating to travel plans and (in the case of Requirement

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<sup>23</sup> Not para 14.2.3 as stated in REP67

37) traffic management plans (see also Requirement 14) during the construction and operational phases. The additional requirement for a traffic management plan has been included because it was requested by HA. (REP67)

*Requirements 20 and 39*

- 6.46 These are not based on model provisions. The discussion in paras 3.48 to 3.52 above is relevant.
- 6.47 Requirement 20 is included because paragraphs 14.5.1 and 14.5.2 of the ES identify some limited potential for flooding at the site. It provides that the authorised development shall not be commenced until approval by NCC of a scheme for mitigation of flood risk during both the construction and operational phases in accordance with the flood risk assessment annexed to the ES. (APP110)
- 6.48 Requirement 39 provides that the authorised development shall not be brought into first commercial use until NCC has approved a flood warning and evacuation plan, to be reviewed thereafter at not more than three-yearly intervals. This is included because the flood risk assessment identifies the need for an emergency access route in the event of a flood.

*Requirement 21*

- 6.49 This requirement deals with fire prevention. It does not follow a model provision. Its inclusion is discussed in para 4.4.29 of the ES.
- 6.50 This was the subject of close examination both in first round written questions (see paras 3.60 to 3.68 above) and in the Specific Issue hearing on safety. The wording of this requirement in its final form has been agreed by the Northumberland Fire and Rescue Service (HEA47).
- 6.51 The ExA is satisfied that potential safety matters arising from the operation of the proposed development, other than those to be addressed under other consent regimes, should be secured adequately and appropriately by this requirement.

*Requirement 22*

- 6.52 The applicant does not propose to use the model provision relating to aquatic ecology, and this has not been disputed by EA.

*Requirement 25*

- 6.53 This is not a model provision. The ES identifies in paras 11.5.52 and 15.6.20 a need for bunds to prevent accidental discharge into the neighbouring estuaries or marine environment. The requirement provides that the authorised development shall not be commenced until approval by NCC of a method statement for the storage of specified liquids and pollution incident response plan, which must be reviewed every five years thereafter. Potentially contaminating liquids are required to be stored within an impermeable bund.

*Requirements 26 and 27*

- 6.54 These are not model provisions but have been included at the request of the Civil Aviation Authority. (RREP142)
- 6.55 Requirement 26 provides that the authorised development shall not commence until details of the chimney stack height and boiler house have been provided to the Defence Geographic Agency for inclusion in the appropriate charting.
- 6.56 Requirement 27 provides that construction of the main stack shall not commence until approval by NCC in consultation with the Civil Aviation Authority of a scheme for the provision of safety lighting on the stack.
- 6.57 These together fulfil the requirements of EN-1 on this point (see paras 3.80 to 3.84 above).

*Requirement 28*

- 6.58 This requirement provides that if the authorised development is not commenced within two years of the date of the environmental statement, then it cannot commence until a survey has been carried out to establish whether there are now any European protected species present or likely to be affected by the works. If there are, then the requirement provides that the relevant part of the works shall not commence until a scheme for protection and mitigation has been approved by NCC, NE and DEFRA.
- 6.59 This differs from Model Requirement 34 in that the assessment only has to be carried out if the authorised development has not commenced within two years of the environmental statement. This is because surveys carried out by the applicant have not identified the presence of relevant species on site.



*Requirements 30, 31 and 32*

- 6.60 These provisions all relate to the control of piling. They are not model provisions but are included at the request of NE, MMO or EA.
- 6.61 Requirement 30 provides that no piling works can commence until a piling method statement has been approved by NCC in consultation with NE, EA and MMO.
- 6.62 Requirement 31 provides that no piling works can commence onshore until approval of a piling method statement by NCC in consultation with NE.
- 6.63 Requirement 32 provides that no piling works shall commence in the River Blyth Estuary until approval of a piling method statement by NCC in consultation with MMO.

*Requirement 34*

- 6.64 This has been expanded from the model provision to create a more stringent regime for the management of dust emissions. This should address directly one of the concerns expressed by local residents.

*Requirement 35*

- 6.65 This deals with on-site waste management. It is not a model provision, but it has been included at the request of NCC, and fulfils the requirement in para 5.14.7 of EN-1.

*Requirement 36*

- 6.66 The applicant does not propose to use the model provision relating to the control of combustion and steam emissions because the EA has made representations that this should be covered more appropriately in the Environmental Permit (see paras 3.92 above).

*Requirement 38*

- 6.67 This requirement, covering readiness for the use of combined heat and power, has been developed in the course of the examination (see paras 3.43 to 3.47 above). Section 4.6 of EN-1 and paras 2.5.26 and 2.5.27 of EN-3 stress the importance of making use of CHP where possible.
- 6.68 In this case there is no obvious immediate customer for CHP. But on the basis that this might change over the

life of the plant the requirement now stipulates that this must be reviewed every five years.

*Requirement 40*

- 6.69 This is not a model provision and is included because it is identified in paras 4.4.1 to 4.4.67 of the ES. It provides that the authorised development shall not be brought into first commercial use until NCC has approved a scheme of site safety and signage.

*Requirement 42*

- 6.70 This has been included at the request of NCC. It provides that no biomass fuel feed-stocks or post-combustion residue may be stored outside any of the buildings forming Work No 1.

*Requirement 43*

- 6.71 This is not based on a model provision but is included because it was requested by the HA.
- 6.72 It provides that a record must be kept of the number of movements of heavy commercial vehicles. If it is anticipated that there will be over 276 movements in any day then the undertaker must implement a traffic mitigation plan, to be approved by NCC, in consultation with the local highway authority (also NCC) and HA. As developed during the examination it now requires that the mitigation plan remains in force until NCC and HA agree that it is no longer required.

*Requirement 44*

- 6.73 The form of this requirement has been debated throughout the examination. The discussion in paras 3.160 to 3.168 is relevant.
- 6.74 Para 2.5.7 of EN-3 stresses the need for the decision-maker to be satisfied that the biomass used is from sustainable sources, and to take account of the possibility that an undertaker might be able to achieve commercial viability even operating outside the Renewables Obligations regime or its possible successors.
- 6.75 The requirement in its current form provides that only biomass fuel feed-stocks that comply with the mandatory sustainability criteria can be burnt in the main boiler(s).

6.76 It seeks to deal with the concern that non-sustainable feed-stocks might be commercially viable by requiring that a fuel sustainability report should be submitted to NCC within twelve months of first commercial use and annually thereafter for as long as the plant operates. These reports must provide the same information and assurance as would be required to prove compliance with for the mandatory sustainability criteria regardless of whether financial support is being claimed.

6.77 The examination sought to test this in first round written Questions 9 to 12, to which the applicant responded at REP35. the applicant was asked to consider an alternative more prescriptive definition applied in a recent Electricity Act s.36 consent for Avonmouth –

“biomass fuel feedstocks” means wood fuel, in the form of virgin wood fibre (chipped roundwood, slabwood, offcuts, peelings, butt reducing chips and bark), recycled wood chips, wood pellets and wood briquettes; energy crops; and other biomass material, including residues from processing cereals (wheat, barley and maize) and oilseeds (rapeseed, sunflower and other oilseeds), that qualify as biomass as defined under the provisions of the Renewables Obligation 2009 (as amended from time to time by other subsequent legislation relevant to power generation);

6.78 The applicant at that stage was prepared to move to this definition with minor amendments (REP35, answer to Q10). Up until the second Specific Issue Hearing on the draft DCO on 9 January 2013 the applicant’s position was –

[The applicant] has decided to adopt the wording as set out in its response to the Rule 8 questions and will in its next revision of the Draft DCO revise the definition to read:

““biomass fuel feedstocks” means (i) wood fuel, in the form of virgin wood fibre (chipped roundwood, slabwood, offcuts, peelings, butt reducing chips and bark), recycled wood chips, wood pellets and wood briquettes; or  
(ii) energy crops; or  
(iii) other biomass material, including residues from processing cereals (wheat, barley and maize) and oilseeds (rapeseed, sunflower and other oilseeds), that qualify as biomass as defined under the provisions of the Renewables Obligation Order 2009 (as amended from time to time by other

subsequent legislation relevant to power generation)." (HEA49)

- But the applicant stated at the hearing that it now believed the original formulation would work more effectively. This is not spelled out in the applicant's final written submissions.

- 6.79 The ExA considers that either approach should deliver the necessary effect. The ExA has not judged that there are firm grounds for going against the applicant's original formulation.

*Requirement 45*

- 6.80 At the request of NCC this provides for a site remediation strategy as and when the plant ceases to operate.

*Requirement 46*

- 6.81 This provides for a Workforce Development Strategy. At the second DCO Specific Issue hearing NCC confirmed that this met their policy objectives in terms of supporting local employment initiatives. In its final form it now includes the involvement of the local Community Liaison Group.

***Overall conclusions on the draft DCO***

- 6.82 The ExA is satisfied that the provisions of the draft DCO and DML as developed during the examination are appropriate, necessary and enforceable. The concerns of the statutory authorities have been met in full. The ExA also believes that the concerns that local residents raised as interested parties have been addressed and as far as possible met.

***s.278 agreement***

- 6.83 The latest version of the s.278 agreement between the applicant and NCC setting out the highways works to be carried out is at REP61.
- 6.84 The ExA considers that this agreement is necessary to the proposed development, and that it is appropriate and proportionate.
- 6.85 The applicant stated the intention to forward the final signed version to the Secretary of State after the close of the examination. The ExA considers that consent should not be granted until the Secretary of State is satisfied that this agreement is signed.

***s.106 agreements***

- 6.86 There are two s.106 agreements.
- 6.87 The first was concluded in May 2012 (REP2) between the applicant, NCC and the Port of Blyth. It essentially establishes a Community Liaison Group (CLG) for the applicant to consult during construction and operation.
- 6.88 This group is already in operation according to the Consultation Report (APP39), even though the s.106 is not fully in force unless and until development consent is granted (Clause 4 of REP2).
- 6.89 The ExA considers that the Secretary of State does not need to place great weight upon this agreement, although the extended role of the CLG to include advising on the Workforce Development Strategy (Requirement 46) and the second s106 agreement, the Landscape Mitigation and Highways Agreement (below) gives it more relevance and importance.
- 6.90 This second s.106 agreement in its draft form is at AS12. It is in the form of a unilateral undertaking given by the applicant and the Port of Blyth to NCC to secure mitigation measures on land on the margins of the proposed development and on the local roads C415 and C403 to improve pedestrian safety (see paras 3.129 to 3.132 above).
- 6.91 The ExA considers that these works are highly desirable from the perspective of the local residents; but if the applicant for whatever reason has failed to submit the concluded version to the Secretary of State that would not be sufficient reason by itself to withhold development consent.



## APPENDIX A – THE EXAMINATION

The table below lists the main 'events' occurring during the examination and the main procedural decisions taken by the ExA.

<b>Date</b>	<b>Examination Event</b>
2 August 2012	Preliminary Meeting
15 August 2012	Issuing by the ExA of procedural decision including confirmation of the examination timetable, first written questions under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 and note of the Preliminary Meeting held on 2 August 2012
29 August 2012	Date by which Statutory Parties were requested to notify the ExA of their wish to be considered as an interested party
17 September 2012	Notification by the ExA of Issue Specific Hearing on the draft Development Consent Order including the Deemed Marine Licence on 11 October 2012 under Rule 13 of the Infrastructure Planning (Examination Procedure) Rules 2010
21 September 2012	Notification by the ExA of procedural decision to vary the examination timetable under Rule 8 (3) of the Infrastructure Planning (Examination Procedure) Rules 2010.
26 September 2012	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Comments on Relevant Representations</li> <li>• Responses to ExA's first written questions</li> <li>• Any summaries of Relevant Representations exceeding 1500 words</li> <li>• Written Representations by all interested parties</li> <li>• Any summaries of Written Representations exceeding 1500 words</li> <li>• Local Impact Report from any local authorities</li> <li>• Notification by an Interested Party of their wish to be heard at an Open Floor hearing</li> <li>• Notification by an Affected Person of their wish to be heard at a Compulsory Acquisition hearing</li> <li>• Notification of wish to make oral representations at the Specific Issue Hearing</li> </ul>

on the draft Development Consent Order  
including the draft Deemed Marine Licence

- 11 October 2012 Issue Specific Hearing on the draft Development Consent Order including Deemed Marine Licence
- 24 October 2012 Deadline for receipt by the ExA of:
- Comments on Written Representations and responses to comments on Relevant Representations
  - Comments on Local Impact Reports
  - Comments on responses to ExA's first written questions
  - Statements of Common Ground
  - Notification of wish to cross examine at a Specific Issue or Compulsory Acquisition Hearing
- 25 October 2012 Notice of ExA's request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 inviting comments on Northumberland County Council's response to the ExA's first round of questions which was received on 12 October 2012.
- 25 October 2012 Deadline for receipt by the ExA of:
- Any written summary of the oral case put at the Specific Issue Hearing held on 11 October 2012
- 2 November 2012 Issuing by the ExA of second written questions
- 6 November 2012 Notification by the ExA of procedural decision to vary the examination timetable under Rule 8 (3) of the Infrastructure Planning (Examination Procedure) Rules 2010 and notification of a Compulsory Acquisition Hearing under Rule 13 of the Infrastructure Planning (Examination Procedure) Rules 2010
- 6 November 2012 Notification by the ExA of procedural decision to vary the examination timetable under Rule 8 (3) of the Infrastructure Planning (Examination Procedure) Rules 2010 and notification of Hearings and Site Visit under Rules 13 and 16 of the Infrastructure Planning (Examination Procedure) Rules 2010
- 9 November 2012 Deadline for responses to the ExA's request for further information on 25 October 2012
- 30 November 2012 Deadline for receipt by the ExA of:
- Responses to ExA's second written questions



	<ul style="list-style-type: none"> <li>• Notification by Interested Parties of wish to speak at any of the Hearings on 4 or 5 December 2012</li> <li>• Notification by Affected Persons of wish to speak at Compulsory Acquisition Hearing on 6 December 2012</li> <li>• Notification by Interested Parties of wish to attend the Accompanied Site Visit on 6 December 2012</li> </ul>
4 December 2012 (AM)	Specific Issue Hearing on Landscape, Design and Visual Impact
4 December 2012 (PM)	Specific Issue Hearing on Access and Transport
5 December 2012 (AM)	Specific Issue Hearing on Safety
5 December 2012 (PM)	Open Floor Hearing
5 December 2012 (Evening)	Open Floor Hearing
6 December 2012 (AM)	Compulsory Acquisition Hearing
6 December 2012 (PM)	Accompanied Site Visit
14 December 2012	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Any revised proposed schedules or requirements for inclusion within the draft Development Consent Order</li> </ul>
17 December 2012	Notification by the ExA of Specific Issue Hearing on the draft Development Consent Order and Deemed Marine Licence under Rule 13 of the Infrastructure Planning (Examination Procedure) Rules 2010
17 December 2012	Notice of ExA's request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to Northumberland County Council and North Blyth Energy Limited
20 December 2012	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> <li>• Any written summary of the oral case put at any Specific Issue Hearing held on 3 and 4 December 2012</li> </ul>
3 January 2013	ExA's report on the implications for European Sites

	published
3 January 2013	Notice of ExA's request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to all Interested Parties regarding the ExA's report on the implications for European Sites
4 January 2013	Deadline for receipt by the ExA of: <ul style="list-style-type: none"><li>• Any written summary of the oral case put at any Open Floor Hearing on 5 December 2012 or Compulsory Acquisition Hearing on 6 December 2012</li><li>• Comments on responses to ExA's second written questions</li><li>• Notification by Interested Parties of wish to speak at the Specific Issue Hearing on 9 January 2013</li></ul>
9 January 2013	Specific Issue Hearing on the draft Development Consent Order and Deemed Marine Licence
9 January 2013	ExA appointed as Section 127 Examiner
14 January 2013	Notice of ExA's request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to The Environment Agency
18 January 2013	Deadline for responses to the ExA's request for further information on 17 December 2012
25 January 2013	Deadline for response from The Environment Agency to the ExA's request for further information on 14 January 2013 and from all Interested Parties to the ExA's request for further information on 3 January 2013
2 February 2013	Examination closed at 23:59

**APPENDIX B – OTHER CONSENTS**

<b>Consent</b>	<b>Consenting Authority</b>	<b>Status Confirmed by the Applicant at the close of the Examination</b>
Environmental Permit	Environment Agency	To be submitted in spring 2013.
Engineering Works Consent	The Crown Estate	Consent is being negotiated.
Harbour Works Licence	Blyth Harbour Commissioners	Will be sought following the grant of development consent.
Permit for transport of abnormal loads	Department for Transport, Highways Agency, Local Highway Authority or the Police and bridge owners (if any) as appropriate	Will be sought following the grant of development consent, during detailed design stage, if required. It is anticipated by the applicant that most, or all, abnormal loads will arrive by sea.
Electricity Generation Licence	OfGEM	Issued on 17 February 2012 (ref: LIC/ELEC/GEN/158).
Hazardous Waste Registration	Environment Agency	Will be sought following the grant of development consent, during detailed design stage.
Permit for commissioning pressure equipment	Health and Safety Executive (HSE)	Confirmation of this requirement to be sought from HSE after DCO has been granted, at detailed design stage.
Temporary Road Traffic Orders	Northumberland County Council	Will be discussed with Highway Authority, after DCO has been granted, before cable works commence.
Building Regulation Approval	Northumberland Country Council	To be obtained after DCO has been granted, during detailed design of generation station and associated buildings.
Water Abstraction Licence	Environment Agency	Will be sought after DCO has been granted, following detailed design.

Discharge Consent	Environment Agency	Will be applied for as part of the Environmental Permit application.
Permit from the Coal Authority	Coal Authority	Licence is being negotiated with Coal Authority. Not in place yet.
Planning Permission for substation (if not covered distribution company's permitted development rights) under the TCPA1990	Northumberland County Council	It is very likely that this will be permitted development.
Section 38/278 Agreement	Northumberland County Council	It has not proved possible to complete the Highway Agreement during the examination. NBEL stated that they will provide a copy to the Secretary of State.
Section 59 Highways Act 1980 Agreement	Northumberland County Council	Not yet known if this is required. Not yet applied for.
Control of Major Accident Hazards Licence	Health and Safety Executive	Not yet known if this is required. Not yet applied for.
Permit to emit CO2	Environment Agency	Not yet applied for.
Permit for connection to external electrical equipment	National Grid	Not yet applied for.
Marine Licence	Marine Management Organisation	Part of the DCO.
European Protected Species Licence (for otters)	Natural England	Not yet known if this is required. Not yet applied for.

**APPENDIX C – LIST OF SPEAKERS AND ATTENDEES**

Parties who attended and who made oral representations at Hearings.

**Preliminary Meeting – 2 August 2012**

<b>Speakers</b>	<b>Other Attendees</b>
Bond Pearce LLP Representing NBEL (Richard Guyatt) Northumberland County Council (Joe Nugent) Carol Crossland Paul Crossland	NBEL (Chris Lawson) Bond Pearce LLP Representing NBEL (Victoria Redman) Northumberland Fire and Rescue (Peter Cook) MMO (Jonathan Peters) MMO (Laura Calvert) Friends of the Earth (Steve Manchee) Natural England (Colin Godfrey) Environment Agency (Cameron Sked)

**Issue Specific Hearing on draft Development Consent Order including Deemed Marine Licence – 11 October 2012**

<b>Speakers</b>	<b>Other Attendees</b>
Bond Pearce LLP Representing NBEL (Richard Guyatt) Bond Pearce LLP Representing NBEL (Victoria Redman) MMO (Jonathan Peters) Friends of the Earth (Steve Manchee) Natural England (Colin Godfrey) Northumberland Country Council (Frances Wilkinson)	NBEL (Chris Lawson) SKM representing NBEL (Matthew Faulkner) MMO (Jonathan Peters) MMO (Laura Calvert) MMO (Dee Allen) MMO (Ellen Moir) MMO (Kevin Marley) MMO (Mike McGoldrick) MMO (Siobhan Sherry) Paul Crossland Carol Crossland Carolyn Mcpherson Philip Stephen Harris Lillian Sandeman

**Specific Issue Hearing on Landscape, Design and Visual Impact – 4 December 2012 (AM)**

<b>Speakers</b>	<b>Other Attendees</b>
NBEL (Chris Lawson) Bond Pearce LLP Representing NBEL (Richard Guyatt) Fairhurst Representing NBEL	SKM representing NBEL (Matthew Faulkner) Bond Pearce LLP Representing NBEL (Victoria Redman)

(Stephen Goodchild) Northumberland Country Council (Frances Wilkinson) Carol Crossland Paul Crossland	Bond Pearce LLP Representing NBEL (Rachel Small)
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**Specific Issue Hearing on Access and Transport – 4 December 2012 (PM)**

**Speakers**

**Other Attendees**

NBEL (Chris Lawson) Bond Pearce LLP Representing NBEL (Richard Guyatt) Fairhurst Representing NBEL (Andrew D’Moch) Northumberland Country Council (Frances Wilkinson) Northumberland Country Council (Richard Peaty) Paul Crossland	SKM representing NBEL (Matthew Faulkner) Carol Crossland Bond Pearce LLP Representing NBEL (Victoria Redman) Bond Pearce LLP Representing NBEL (Rachel Small) Carolyn Mcpherson
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**Specific Issue Hearing on Safety – 5 December 2012 (AM)**

**Speakers**

**Other Attendees**

NBEL (Chris Lawson) Bond Pearce LLP Representing NBEL (Richard Guyatt) Northumberland Fire and Rescue (Kevin Wylie) Ramboll Representing NBEL (Peter Muir) Paul Crossland	SKM representing NBEL (Matthew Faulkner) Carol Crossland Ramboll Representing NBEL (Paul Thomas) Bond Pearce LLP Representing NBEL (Victoria Redman) Bond Pearce LLP Representing NBEL (Rachel Small)
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**Open Floor Hearing – 5 December 2012 (PM)**

**Speakers**

**Other Attendees**

NBEL (Chris Lawson) NBEL (Johannah Doyle) Bond Pearce LLP Representing NBEL (Richard Guyatt) Friends of the Earth (Steve Manchee) Carol Crossland Paul Crossland	SKM representing NBEL (Matthew Faulkner) Bond Pearce LLP Representing NBEL (Victoria Redman) Bond Pearce LLP Representing NBEL (Rachel Small)
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**Open Floor Hearing – 5 December 2012 (Evening)<sup>24</sup>**

**Speakers**

**Other Attendees**

<sup>24</sup> The only Interested Parties to attend were Mr and Mrs Crossland. Mr Crossland had spoken at the Open Floor Hearing held that afternoon. Mr and Mrs Crossland declined the opportunity to speak further.

	<p>NBEL (Chris Lawson)                  NBEL (Johannah Doyle)                  Bond Pearce LLP Representing NBEL (Richard Guyatt)                  SKM representing NBEL (Matthew Faulkner)                  Bond Pearce LLP Representing NBEL (Victoria Redman)                  Bond Pearce LLP Representing NBEL (Rachel Small)                  Paul Crossland                  Carol Crossland</p>
<p><b>Compulsory Acquisition Hearing – 6 December 2012</b></p>	
<p><b>Speakers</b></p>	<p><b>Other Attendees</b></p>
<p>NBEL (Chris Lawson)                  Bond Pearce LLP Representing NBEL (Richard Guyatt)</p>	<p>Paul Crossland                  Carol Crossland                  Bond Pearce LLP Representing NBEL (Victoria Redman)                  Alcan (James Thompson)</p>
<p><b>Accompanied Site Visit – 6 December 2012</b></p>	
<p><b>Speakers</b></p>	<p><b>Other Attendees</b></p>
	<p>NBEL (Chris Lawson)                  Paul Crossland                  Carol Crossland</p>
<p><b>Issue Specific Hearing on draft Development Consent Order including Deemed Marine Licence – 9 January 2013</b></p>	
<p><b>Speakers</b></p>	<p><b>Other Attendees</b></p>
<p>NBEL (Chris Lawson)                  Bond Pearce LLP Representing NBEL (Richard Guyatt)                  Northumberland Fire and Rescue (Kevin Wylie)                  Marine Management Organisation (Jonathan Peters)                  Northumberland Country Council (Frances Wilkinson)</p>	<p>Bond Pearce LLP Representing NBEL (Victoria Redman)                  MMO (Laura Calvert)                  Northumberland Fire and Rescue (Peter Crook)                  Paul Crossland                  Carol Crossland</p>

**APPENDIX D – ABBREVIATIONS**

<b>Abbreviation</b>	<b>Meaning</b>
CAA	Civil Aviation Authority
CABE	Commission for Architecture and the Built Environment
CEMP	Construction and Environmental Management Plan
CHP	Combined Heat and Power
CLG	Community Liaison Group
COMAH	Control of Major Accidents Hazards Regulations 1999
DAS	Design and Access Statement
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DECC	Department for Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DML	Deemed Marine Licence
EA	Environment Agency
EfW	Energy from Waste
EIA	Environmental Impact Assessment
EMP5	Policy in Wansbeck Local Plan
EN-1	Overarching Energy National Policy Statement
EN-3	Renewable Energy Infrastructure National Policy Statement
ES	Environmental Statement
<i>et seq</i>	And the following
ExA	Examining Authority
FSR	Fuel Sustainability Report
GP1	General Principles 1
GTA	Guidance on Transport Assessment
HA	Highways Agency
HGV	Heavy Goods Vehicles
HIA	Health Impact Assessment
HPA	Health Protection Agency
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
<i>inter alia</i>	Among other things
IP	Interested Party
IPC	Infrastructure Planning Commission
km	Kilometres
LIR	Local Impact Report
m	Meters
m <sup>3</sup> /s	Cubic Meter per Second
MMO	Marine Management Organisation
MW	Megawatt
NCC	Northumberland County Council
NE	Natural England



NERC	Natural Environment and Rural Communities Act 2006
NFRS	Northumberland Fire and Rescue Service
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NTFoE	North Tyneside Friends of the Earth
°C	Degrees Celsius
PA2008	Planning Act 2008 (as amended)
PPS22	Planning Policy Statement 22
PPS25	Planning Policy Statement 25
PSED	Public Sector Equality Duty
RIES	Report on the Impact on European Sites
ROCs	Renewables Obligations Certificates
SI	Specific Issue
SI	Statutory Instrument
SNCI	Site of Nature Conservation Importance
SoCG	Statement of Common Ground
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TA	Traffic Assessment
TCE	The Crown Estate
TCPA1990	Town and Country Planning Act 1990
TMP	Transport Management Plan
TVR1986	Trustees to the Viscount Ridley's 1986 Settlement
UXO	Unexploded Ordinance

**APPENDIX E – MODIFICATIONS TO THE APPLICATION MADE BY THE APPLICANT (NBEL) AND ACCEPTED BY THE EXAMINING AUTHORITY**

<b>Post Submission Changes to the Application</b>	
REP1	<a href="#">120522_EN010016_Section 106 Cover Letter</a>
REP2	<a href="#">120514_EN010016_Section 106 agreement - Final</a>
REP4	<a href="#">120926_EN010016_Revised draft Development Consent Order and Deemed Marine Licence v2.0</a>
REP5	<a href="#">120926_EN010016_Revised Explanatory Memorandum v2.0</a>
REP6	<a href="#">15.1 - Additions, Omissions and Errors from the original application</a>
REP7	<a href="#">15.2.2 - Bored Pile Wall - Method Statement</a>
REP8	<a href="#">15.2.3 - Statement of Reasons - Erratum</a>
APP52	<a href="#">6.1.07.1 (updated) Air Quality (ES Chapter 7)</a> <i>Referred to as 15.2.4 in document 15.1</i>
APP84	<a href="#">6.2.18.1 (updated) Commercial fisheries assessment (Appendix 4.12 of ES)</a> <i>Referred to as 15.2.5 in document 15.1</i>
APP11	<a href="#">15.2.6 - Document 2.5 (rev 2)- Drawing of NEW AND ALTERED MEANS OF ACCESS</a>
APP13	<a href="#">15.2.7 - Document 2.6 (rev 2) - Drawing of STATUTORY AND NON-STATUTORY SITES OR FEATURES</a>
APP30	<a href="#">15.2.8 - Document 2.20 (rev 2) - Drawing of PORT OF BLYTH SECURITY HUT</a>
REP9	<a href="#">121130_EN010016_33.1 - Additions, Omissions and Errors from the original application</a>
REP10	<a href="#">121130_EN010016_Revised draft Development Consent Order and Deemed Marine Licence v3.0</a>
REP11	<a href="#">121130_EN010016_Revised Explanatory Memorandum v3.0</a>
APP8	<a href="#">33.2 Document 2.3 (rev 2) - Works Plan</a>
APP27	<a href="#">33.3 Document 2.18 (rev 2) - Cooling Water Intake and Outfall Route drawing</a>
REP12	<a href="#">121130_EN010016_33.4 - Email - EA to NBEL regarding draft DCO</a> <i>Referred to as 33.3 in document 33.1</i>
REP13	<a href="#">121214_EN010016_41.1 - Cover letter for the developer's additional submission on 14 December 2012</a>
REP14	<a href="#">121214_EN010016_40.1 - Contents list for the additional submission provided on 14 December 2012</a>

REP15	<a href="#">121214_EN010016_42.1 - Revised draft Development Consent Order and Deemed Marine Licence v4.0</a>
REP16	<a href="#">121214_EN010016_42.3 - Revised Explanatory Memorandum v4.0</a>
APP32	<a href="#">121217_EN010016_43.1 - Massing Plan</a>
APP19	<a href="#">121217_EN010016_43.2 - Elevations (update to document 2.11) (rev 2)</a>
APP33	<a href="#">121217_EN010016_43.3 - Heat radiation contour plan</a>
REP17	<a href="#">130111_EN010016_61.1 - Cover letter</a> <i>Cover letter for NBEL's submission relating to DCO hearing on 9 January 2013</i>
REP18	<a href="#">130111_EN010016_62.1 - Revised draft Development Consent Order and Deemed Marine Licence - clean version.v5.0</a>
REP19	<a href="#">130111_EN010016_62.3 - Summary of changes to draft DCO and DML following Specific Issues Hearing - 9 January 2013v 5.0</a>
AS12	<a href="#">130118_EN010016_Doc 74.1 Draft Unilateral Undertaking - Landscape mitigation and Highways</a>
AS13	<a href="#">130118_EN010016_Doc 74.1.1 Secondary Mitigation Plan</a>
AS14	<a href="#">130118_EN010016_Doc 74.2 Update to Secondary Mitigation Proposals</a>
AS15	<a href="#">130118_EN010016_Doc 74.2.1 Updated Cross Section Location Plan (figure 9.46)</a>
AS16	<a href="#">130118_EN010016_Doc 74.2.2 Updated Section A-A (figure 9.49)</a>
AS17	<a href="#">130118_EN010016_Doc 74.2.3 Updated Section B-B (figure 9.50)</a>
AS18	<a href="#">130118_EN010016_Doc 74.2.4 Updated Section C-C (figure 9.51)</a>
REP63	<a href="#">130125_EN010016_80.1 – Contents</a> <i>Contents list for NBEL's additional submission relating to the DCO hearing on 9 January 2013</i>
REP64	<a href="#">130125_EN010016_81.1 - Cover letter</a>
REP65	<a href="#">130125_EN010016_81.1.1 - Drawing for Section 278 Agreement</a>
REP66	<a href="#">130125_EN010016_82.1 - Revised Draft Development Consent Order including deemed Marine Licence v6.0 - clean</a>
REP67	<a href="#">130125_EN010016_82.3 - Revised Explanatory Memorandum v5.0 - clean</a>
REP68	<a href="#">130125_EN010016_82.5 - Report on revisions to draft DCO including DML</a>
REP73	<a href="#">130125_EN010016_82.5.5 - Site Plan - North Blyth</a>
AS19	<a href="#">AS-0009 Chris Lawson, NBEL - 84.1.1 - Updated Secondary Mitigation Plan (update of document 74.1.1)</a>

AS20	<a href="#">AS-0008 Chris Lawson, NBEL - 84.1 - DRAFT Unilateral Undertaking (update of document 74.1)</a>
AS21	<a href="#">AS-0010 Chris Lawson, NBEL - 84.1.2 - DRAFT Unilateral Undertaking - Appendix 2</a>
REP74	<a href="#">130201_EN010016_90.1 - Contents</a> <i>Contents list for NBEL's final Submission dated 1 February 2013</i>
REP75	<a href="#">130201_EN010016_91.1 - Cover letter</a> <i>Cover letter for NBEL's final submission dated 1 February 2013</i>
REP76	<a href="#">130201_EN010016_92.1 - draft Development Consent Order including Deemed Marine License v7.0</a>
REP77	<a href="#">130201_EN010016_93.1 - Final Submissions by North Blyth Energy Limited</a>
REP82	<a href="#">130201_EN010016_93.1.5 - Letter to RWE - Undertaking</a>
AS22	<a href="#">AS-0011 Chris Lawson, NBEL - 94.1 -Unilateral Undertaking – signed</a>

## APPENDIX F – EXAMINATION LIBRARY

### INDEX

- APP**      **Application Documents** – documents submitted by the applicant under s.37 of the Planning Act 2008.
- PD**      **Project Documents** – documents relating to the project excluding application documents. Includes the procedural decisions made by the Examining Authority.
- RREP**     **Relevant Representations**
- REP**      **Representations and Submissions** – representations and submissions made to the Planning Inspectorate in accordance with the procedural deadlines specified in the examination timetable issued in the Rule 8 letter at the start of the examination. Also additional evidence or documents received during the examination outside the deadlines specified in the examination timetable issued in the Rule 8 letter at the start of the examination.
- AS**      **Additional Submissions** – submissions received by the Planning Inspectorate between the acceptance of the application and the start of the examination but which were not able to be treated as relevant representations. Also additional evidence or documents received during the examination outside the deadlines specified in the examination timetable issued in the Rule 8 letter at the start of the examination.
- HEA**     **Hearings** – hearing agendas; summary of case made; audio recordings of the Preliminary Meeting and Hearing sessions.
- SoCG**    **Statements of Common Ground**

<b>APPLICATION DOCUMENTS</b>	
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<b>Plans</b>	
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APP7	<a href="#">2.3 Works Plan</a>
APP8	<a href="#">33.2 Document 2.3 (rev 2) - Works Plan</a>
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APP32	<a href="#">121217_EN010016_43_1 - Massing Plan</a>
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REP10	<a href="#">121130_EN010016_Revised draft Development Consent Order and Deemed Marine Licence v3.0</a>
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APP59	<a href="#">6.1.14 Surface Water Hydrology and Flood Risk (ES Chapter 14)</a>
APP60	<a href="#">6.1.15 Hydrology Geology Ground Contamination and Soils (ES Chapter 15)</a>

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APP96	<a href="#">6.2.30 Operating noise model data (Appendix 8.4 of Environmental Statement)</a>
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APP98	<a href="#">6.2.32 Identification and Evaluation of landscape impacts (Appendix 9.1 of Environmental Statement)</a>
APP99	<a href="#">6.2.33 National landscape character assessment - Northumberland (Appendix 9.2 of Environmental Statement)</a>
APP100	<a href="#">6.2.34 Reptile survey report (Appendix 10.1 of Environmental Statement)</a>
APP101	<a href="#">6.2.35 Battleship Wharf - Phase 1 habitat survey - plant list (Appendix 10.2 of Environmental Statement)</a>
APP102	<a href="#">6.2.36 Grid connection route Phase 1 habitat survey plant list (Appendix 10.3 of Environmental Statement)</a>
APP103	<a href="#">6.2.37 Benthic Fauna Survey (Appendix 11.1 of Environmental Statement)</a>
APP104	<a href="#">6.2.38 Additional information on the aquatic impacts at North Blyth (Appendix 11.2 of Environmental Statement)</a>
APP105	<a href="#">6.2.39 Marine Conservation Zone NG 13 Description and Objectives (Appendix 11.3 - of Environmental Statement)</a>
APP106	<a href="#">6.2.40 Habitats regulations assessment report (Appendix 12.1 of Environmental Statement)</a>
APP107	<a href="#">6.2.41 Breeding birds report (Appendix 12.2 of Environmental Statement)</a>
APP108	<a href="#">6.2.43 Transport Assessment (Appendix 13.1 of Environmental Statement)</a>
APP109	<a href="#">6.2.44 Travel Plan (Appendix 13.2 of Environmental Statement)</a>
APP110	<a href="#">6.2.45 Flood risk assessment (Appendix 14.1 of Environmental Statement)</a>
APP111	<a href="#">6.2.46.1 Desk Study Report - Land Quality Assessment (Appendix 15.01 of ES part 1)</a>
APP112	<a href="#">6.2.46.2 Desk Study Report - Land Quality Assessment (Appendix 15.01 of ES part 2)</a>
APP113	<a href="#">6.2.46.3 Desk Study Report - Land Quality Assessment (Appendix 15.01 of ES part 3)</a>
APP114	<a href="#">6.2.46.4 Desk Study Report - Land Quality Assessment (Appendix 15.01 of ES part 4)</a>
APP115	<a href="#">6.2.47 Updated preliminary contaminated land conceptual model (Appendix 15.2 of Environmental Statement)</a>
APP116	<a href="#">6.2.48 Geophysical (Bathymetric) survey - Cooling Water Outfall (Appendix 15.3 of Environmental Statement)</a>
APP117	<a href="#">6.2.49 Archaeological desk based assessment (Appendix 16.1 of Environmental Statement)</a>
APP118	<a href="#">6.2.50 Health impact assessment (Appendix 17.1 of Environmental Statement)</a>
APP119	<a href="#">6.3.00 Contents Page (Figures for ES)</a>
APP120	<a href="#">6.3.01 Figures for Chapter 1 of Environmental Statement</a>
APP121	<a href="#">6.3.02 Figures for Chapter 2 of Environmental Statement</a>

APP122	<a href="#">6.3.03 Figures for Chapter 3 of Environmental Statement</a>
APP123	<a href="#">6.3.04 Figures for Chapter 4 of Environmental Statement</a>
APP124	<a href="#">6.3.05 Figures for Chapter 5 of Environmental Statement</a>
APP125	<a href="#">6.3.06 Figures for Chapter 6 of Environmental Statement</a>
APP126	<a href="#">6.3.07 Figures for Chapter 7 of Environmental Statement</a>
APP127	<a href="#">6.3.08 Figures for Chapter 8 of Environmental Statement</a>
APP128	<a href="#">6.3.09.1 Figures for Chapter 9 of Environmental Statement (part 1)</a>
APP129	<a href="#">6.3.09.2 Figures for Chapter 9 of Environmental Statement (part 2)</a>
APP130	<a href="#">6.3.09.3 Figures for Chapter 9 of Environmental Statement (part 3)</a>
APP131	<a href="#">6.3.09.4 Figures for Chapter 9 of Environmental Statement (part 4)</a>
APP132	<a href="#">6.3.10 Figures for Chapter 10 of Environmental Statement</a>
APP133	<a href="#">6.3.11 Figures for Chapter 11 of Environmental Statement</a>
APP134	<a href="#">6.3.12 Figures for Chapter 12 of Environmental Statement</a>
APP135	<a href="#">6.3.13 Figures for Chapter 13 of Environmental Statement</a>
APP136	<a href="#">6.3.14 Figures for Chapter 14 of Environmental Statement</a>
APP137	<a href="#">6.3.15 Figures for Chapter 15 of Environmental Statement</a>
APP138	<a href="#">6.3.16 Figures for Chapter 16 of Environmental Statement</a>
APP139	<a href="#">6.3.17 Figures for Chapter 17 of Environmental Statement</a>
APP140	<a href="#">6.4.1 Non-technical Summary</a>
APP141	<a href="#">6.4.2 Non-technical Summary Figures</a>
<b>Other Documents</b>	
APP142	<a href="#">6.5 Scoping Opinion</a>
APP143	<a href="#">7.1 Grid connection statement</a>
APP144	<a href="#">8.1 Design and Access Statement</a>
APP145	<a href="#">8.2 Sustainability Appraisal</a>
APP146	<a href="#">8.3 Consents and licences required under other legislation</a>
APP147	<a href="#">8.4 Draft Section 106 Agreement</a>
REP2	<a href="#">120514_EN010044_Section 106 agreement - Final</a>
APP148	<a href="#">8.5 Draft Section 278 Agreement</a>
<b>PROJECT DOCUMENTS</b>	
PD1	<a href="#">120411_EN010016_Acceptance Decision Letter</a>
PD2	<a href="#">120411_EN010016_Section 55 Acceptance of Applications Checklist</a>
PD3	<a href="#">120424_EN010016_s.56 Notice</a>
PD4	<a href="#">120608_EN010016_S58/S59/REG13 certs</a>
PD5	<a href="#">120617_EN010016_Transboundary Screening Matrix</a>
PD6	<a href="#">120705_EN010016_Blyth Rule 4 and 6 FINAL</a>
PD7	<a href="#">120815_EN010016_Rule 8 Letter FINAL</a>
PD8	<a href="#">120815_EN010016_RIES matrices</a>
PD9	<a href="#">120917_EN010016_Rule 13 letter Final</a> <i>Letter cancelling the DCO hearing scheduled for 26 September 2012</i>
PD10	<a href="#">120920_EN010016_Rule 8(3) Letter FINAL</a> <i>Letter amending the examination time table</i>
PD11	<a href="#">121022_EN010016_Rule 17 letter requesting comments on NCC late response to first round of questions</a>
PD12	<a href="#">1201031_EN010016_Second round of written questions</a>
PD13	<a href="#">121105_EN010016_R13 (3) (b) Final</a> <i>Letter notifying affected persons about the compulsory acquisition hearing scheduled for 6 December 2012</i>

PD14	<a href="#">121105_EN010016_R8(3)_R13(3)(a)_R16(3)_Final</a> <i>Letter notifying interested parties about issue specific hearings, open floor hearings and the site visit scheduled for 3-6 December 2012</i>
PD15	<a href="#">121003_EN010016_Agenda for SI Hearing on the draft DCO</a> <i>Agenda for issue specific hearing on the DCO held 11 October 2012</i>
PD16	<a href="#">121127_EN010016_Agendas and information for Open Floor Hearings &amp; Issue Specific Hearings letter</a> <i>Agendas hearings held between 4-5 December 2012</i>
PD17	<a href="#">121127_EN010016_Agenda and information for Compulsory Acquisition Hearing letter</a> <i>Agenda for compulsory acquisition hearing held on 6 December 2012</i>
PD18	<a href="#">121217_EN010016_Rule_17_letter to NBEL</a>
PD19	<a href="#">121217_EN010016_Rule_17_letter to NCC</a>
PD20	<a href="#">121712_EN010016_Rule_13_3a_Final</a> <i>Letter notifying interested parties about the issue specific hearing on the DCO scheduled for on 9 January 2013</i>
PD21	<a href="#">130103_EN010016_Rule_17_letter to all IPs requesting response to RIES</a>
PD22	<a href="#">130103_EN010016_RIES</a>
PD23	<a href="#">130103_EN010016_Agenda for Specific Issue Hearing on the draft Development Consent Order and draft Deemed Marine Licence 9 January 2013</a>
PD24	<a href="#">130114_EN010016_Rule_17_letter to the Environment Agency</a>
PD25	<a href="#">130108_EN010016_Letter - Section 127 application - North Blyth (Network Rail)</a>
PD26	<a href="#">130108_EN010016_Appendix 1 - draft Development Consent Order and Deemed Marine Licence (doc 42.1) (Network Rail)</a>
PD27	<a href="#">130108_EN010016_Appendix 2 - Land Plan (doc 2.2) (Network Rail)</a>
PD28	<a href="#">130108_EN010016_Appendix 3 - Network Rail - Land Plan (Network Rail)</a>
PD29	<a href="#">130108_EN010016_Appendix 4 - Book of Reference (doc 4.3) (Network Rail)</a>
PD30	<a href="#">130108_EN010016_Appendix 5 - Statement of Reasons (doc 4.1) (Network Rail)</a>
PD31	<a href="#">130108_EN010016_Appendix 6 - Email from NRIL to PINS (Network Rail)</a>
PD32	<a href="#">130109_EN010016_Blyth DfT Section 127 Appointment (Network Rail)</a>
PD33	<a href="#">130108_EN010016_Letter - Section 127 application - North Blyth</a> <i>RWE Npower</i>
PD34	<a href="#">130108_EN010016_Appendix 1 - draft Development Consent Order and Deemed Marine Licence (doc 42.1)</a> <i>RWE Npower</i>
PD35	<a href="#">130108_EN010016_Appendix 2 - Land Plan (doc 2.2)</a> <i>RWE Npower</i>
PD36	<a href="#">130108_EN010016_Appendix 3 - RWE Npower Land Plan</a> <i>RWE Npower</i>
PD37	<a href="#">130108_EN010016_Appendix 4 - Book of Reference (doc 4.3)</a> <i>RWE Npower</i>
PD38	<a href="#">130108_EN010016_Appendix 5 - Statement of Reasons (doc 4.1)</a> <i>RWE Npower</i>
PD39	<a href="#">130108_EN010016_Appendix 6 - Email to PINS from RWE npower</a> <i>RWE Npower</i>
PD40	<a href="#">130109_EN010016_Blyth DECC Section 127 Appointment</a> <i>RWE Npower</i>
PD41	<a href="#">130114_EN010016_s.127 Post Appointment Letter from ExA</a> <i>Letter informing RWE Npower, NBEL and Network Rail who has been appointed S.127 examining inspector</i>

PD42	<a href="#">130108_EN010016_Signed Letter to Hazel Anderson from Bond Pearce dated 8 Jan 2013</a> <i>Letter to Network Rail regarding protective provisions</i>
PD43	<a href="#">130108_EN010016_Hazel Anderson (Network rail) Compulsory Acquisition issues</a> <i>Network Rail's response to Bond Pearce letter dated 8 January 2013</i>
PD44	<a href="#">130109_EN010016_North Blyth's response to Hazel Anderson (Network rail) Compulsory Acquisition letter</a> <i>Bond Pearce response to Network rail's letter dated 8 January 2013</i>
PD45	<a href="#">130111_EN010016_Letter re section 127 applications from Bond Pearce</a>
PD46	<a href="#">130116_EN010016_Further letter re section 127 applications from Bond Pearce</a>
PD47	<a href="#">130117_EN010016_Representation withdrawal request from Alan Todd, Port of Blyth and PINS confirmation response</a>
PD48	<a href="#">130118_EN010016_Doc 73.1.2 Emails from Network Rail and NBEL regards Section 127</a>
PD49	<a href="#">130118_EN010016_Doc 73.1.3 Letter to PINS regarding s127 - 11 Jan 2013</a>
PD50	<a href="#">130118_EN010016_Doc 73.1.4 Letter to PINS regarding s127 - 16 Jan 2013</a>
PD51	<a href="#">130118_EN010016_Doc 73.1.1 Letter regarding representation withdrawal confirmation to Port of Blyth</a> <i>Letter confirming the withdrawal of Port of Blyth's representation</i>
PD52	<a href="#">130201_EN010016_Representation withdrawal request from Matthew Trigg, RWE npower &amp; PINS confirmation response</a>
PD53	<a href="#">130201_EN010016_Representation withdrawal request from Winckworth Sherwood on behalf of Network Rail &amp; PINS confirmation response</a>
PD54	<a href="#">130125_EN010016_Letter to PINS regarding RWE Npower s127 application from Bond Pearce</a>
PD55	<a href="#">130125_EN010016_Letter to PINS regarding Network Rail s127 application from Bond Pearce</a>
PD56	<a href="#">130201_EN010016_Letter to PINS re withdrawal of RWE Npower's s127 application from Bond Pearce</a>
PD57	<a href="#">130201_EN010016_Letter to PINS re withdrawal of Network Rail's s127 application from Bond Pearce</a>
PD58	<a href="#">130204_EN010016_s.99 Letter FINAL</a>
<b>RELEVANT REPRESENTATIONS</b>	
RREP1	<a href="#">Laura Kay</a>
RREP2	<a href="#">Mr Andrew Gladstone</a>
RREP3	<a href="#">Pat Armstrong</a>
RREP4	<a href="#">Sarah Mumford</a>
RREP5	<a href="#">Christopher Wakeley</a>
RREP6	<a href="#">Mia Schmidt-Hansen</a>
RREP7	<a href="#">Graham Lingley</a>
RREP8	<a href="#">Gary Noble</a>
RREP9	<a href="#">Kenn Winter</a>
RREP10	<a href="#">Mrs Rae Cecil</a>
RREP11	<a href="#">Christopher Panayi</a>
RREP12	<a href="#">Eric Blakeley</a>
RREP13	<a href="#">Florence Diana Simpson</a>
RREP14	<a href="#">Dr. Peter Foreman, FIET</a>
RREP15	<a href="#">Ronald Newton</a>

RREP16	<a href="#">Patricia Marsh-Stefanovska</a>
RREP17	<a href="#">Anthony C. Cain</a>
RREP18	<a href="#">Steven Bryant</a>
RREP19	<a href="#">Marco Angelo Marques Da Silva</a>
RREP20	<a href="#">David Peter Foley</a>
RREP21	<a href="#">Roger Cox</a>
RREP22	<a href="#">Ali Abbas</a>
RREP23	<a href="#">L Warren</a>
RREP24	<a href="#">Antoinette Hookway</a>
RREP25	<a href="#">Anna Robertson</a>
RREP26	<a href="#">Philip Stephen Harris</a>
RREP27	<a href="#">Adela Pickles</a>
RREP28	<a href="#">Ken Neal</a>
RREP29	<a href="#">Will John Duckworth</a>
RREP30	<a href="#">Louise Barton</a>
RREP31	<a href="#">Mrs. P. Prosser</a>
RREP32	<a href="#">Cheryl Penn</a>
RREP33	<a href="#">Philomena Grimley</a>
RREP34	<a href="#">Vipul Patel</a>
RREP35	<a href="#">Chris Bluemel</a>
RREP36	<a href="#">Lynda Haines</a>
RREP37	<a href="#">Alice Gordon</a>
RREP38	<a href="#">Lindsay Southcombe</a>
RREP39	<a href="#">Patrick Miller</a>
RREP40	<a href="#">Mark Swinton</a>
RREP41	<a href="#">Patrick Arblaster</a>
RREP42	<a href="#">Alice Dennett</a>
RREP43	<a href="#">Christina Cherry</a>
RREP44	<a href="#">Nicole Miller</a>
RREP45	<a href="#">Lauren Lansdowne</a>
RREP46	<a href="#">Alex Marques</a>
RREP47	<a href="#">Stephen Hughes</a>
RREP48	<a href="#">Veronica Goddard</a>
RREP49	<a href="#">Heather Tomlinson</a>
RREP50	<a href="#">Claire Baker-Munton</a>
RREP51	<a href="#">Ms J Kirby</a>
RREP52	<a href="#">Chris Redston</a>
RREP53	<a href="#">Will John Duckworth</a>
RREP54	<a href="#">Rosemary Warrington</a>
RREP55	<a href="#">Nick Baylis</a>
RREP56	<a href="#">Christine Coulouris</a>
RREP57	<a href="#">Ruth Griffiths</a>
RREP58	<a href="#">Professor Patricia Howard</a>
RREP59	<a href="#">Carole Mortimer</a>
RREP60	<a href="#">Mr Jonathan P Tyler</a>
RREP61	<a href="#">Bernard Greenwood</a>
RREP62	<a href="#">Luke Roberts</a>
RREP63	<a href="#">Daniel Gaze</a>

RREP64	<a href="#">Pam Lightfoot</a>
RREP65	<a href="#">Anneliese OBrien</a>
RREP66	<a href="#">Christopher Dove</a>
RREP67	<a href="#">Tom Foxe</a>
RREP68	<a href="#">Margaret Michell</a>
RREP69	<a href="#">Andrew Cormie</a>
RREP70	<a href="#">Jess Lloyd</a>
RREP71	<a href="#">Patrick Cosgrove</a>
RREP72	<a href="#">Mrs Marie King</a>
RREP73	<a href="#">Mrs Hilary Burn</a>
RREP74	<a href="#">Boris Gleitzmann</a>
RREP75	<a href="#">Christine McCabe</a>
RREP76	<a href="#">Ana Dragalina</a>
RREP77	<a href="#">Richard D E Stott</a>
RREP78	<a href="#">James Joy</a>
RREP79	<a href="#">James Clugston</a>
RREP80	<a href="#">A Raven</a>
RREP81	<a href="#">Richard Comaish</a>
RREP82	<a href="#">MRS PENNY DELLOW</a>
RREP83	<a href="#">Daniel Scott</a>
RREP84	<a href="#">Mike Wheeler</a>
RREP85	<a href="#">Jill Perry</a>
RREP86	<a href="#">Leslie Dalton</a>
RREP87	<a href="#">Charles T Pollard</a>
RREP88	<a href="#">Kester Ratcliff</a>
RREP89	<a href="#">John Forbes</a>
RREP90	<a href="#">Lewis White</a>
RREP91	<a href="#">Ernest Effer</a>
RREP92	<a href="#">William Mathieson</a>
RREP93	<a href="#">Mark Ingram</a>
RREP94	<a href="#">Claudia Boulton</a>
RREP95	<a href="#">Liz Marsden</a>
RREP96	<a href="#">Roy Turnbull</a>
RREP97	<a href="#">Mrs Christine Williams</a>
RREP98	<a href="#">Tony McNicholl</a>
RREP99	<a href="#">James Hewitt</a>
RREP100	<a href="#">Shan Barclay</a>
RREP101	<a href="#">Diana Dench</a>
RREP102	<a href="#">Susan Chapman</a>
RREP103	<a href="#">Mrs. Irma McLaughlin</a>
RREP104	<a href="#">Francoise Grimshaw</a>
RREP105	<a href="#">Rev Paul Cawthorne</a>
RREP106	<a href="#">Steve Dobson</a>
RREP107	<a href="#">David Lightfoot</a>
RREP108	<a href="#">Anna Childs</a>
RREP109	<a href="#">Fran Rawcliffe</a>
RREP110	<a href="#">Miss Lesley M Bosworth</a>
RREP111	<a href="#">Jaime Tanna</a>

RREP112	<a href="#">Gordon Wilson</a>
RREP113	<a href="#">Jane Turney</a>
RREP114	<a href="#">Cally Smith</a>
RREP115	<a href="#">Susan Westlake</a>
RREP116	<a href="#">Richard Nicholls</a>
RREP117	<a href="#">Emma Spurgin Hussey</a>
RREP118	<a href="#">Mrs. Gloria Potter</a>
RREP119	<a href="#">Nile Nugnez</a>
RREP120	<a href="#">James Docherty</a>
RREP121	<a href="#">Lynn Evans</a>
RREP122	<a href="#">David Baker</a>
RREP123	<a href="#">Tonia Atkinson</a>
RREP124	<a href="#">Sophie Franklin</a>
RREP125	<a href="#">Michael Cox</a>
RREP126	<a href="#">Mark Harrison PhD</a>
RREP127	<a href="#">Dr Peter Hirst</a>
RREP128	<a href="#">Alison Rennie</a>
RREP129	<a href="#">MRS MARJORIE J LEWIS</a>
RREP130	<a href="#">Holly Lamar</a>
RREP131	<a href="#">Jack Scotcher</a>
RREP132	<a href="#">Christine Way</a>
RREP133	<a href="#">David Lee</a>
RREP134	<a href="#">John H. Brogden</a>
RREP135	<a href="#">Antony Melville</a>
RREP136	<a href="#">Caron Willans</a>
RREP137	<a href="#">Dr Thomas T Gough</a>
RREP138	<a href="#">Liz Carlton</a>
RREP139	<a href="#">Tim Stevenson</a>
RREP140	<a href="#">Alison Hunt</a>
RREP141	<a href="#">Kate Foster</a>
RREP142	<a href="#">Civil Aviation Authority</a>
RREP143	<a href="#">Hilary Hampton</a>
RREP144	<a href="#">Maureen Fairley</a>
RREP145	<a href="#">Michael van Beinum</a>
RREP146	<a href="#">Mary Foley</a>
RREP147	<a href="#">Mrs June Gledson</a>
RREP148	<a href="#">Bryony Hopkinshaw</a>
RREP149	<a href="#">Wade Crawley</a>
RREP150	<a href="#">Tim Wakeford</a>
RREP151	<a href="#">Katie Donald</a>
RREP152	<a href="#">Kari Manovitch</a>
RREP153	<a href="#">Anthony Bowler</a>
RREP154	<a href="#">Jonathan Kendrew</a>
RREP155	<a href="#">Guy Johnson</a>
RREP156	<a href="#">Design Council Caba</a>
RREP157	<a href="#">Eileen Dale</a>
RREP158	<a href="#">Dan Bramwell</a>
RREP159	<a href="#">Jonathan Agnew</a>

RREP160	<a href="#">Mike Croker</a>
RREP161	<a href="#">Carolyn Mcpherson</a>
RREP162	<a href="#">Northumberland Fire and Rescue Service</a>
RREP163	<a href="#">Office of Rail Regulation (ORR)</a>
RREP164	<a href="#">Maritime and Coastguard Agency</a>
RREP165	<a href="#">E Chandler</a>
RREP166	<a href="#">Claire Green</a>
RREP167	<a href="#">Simon Mesner</a>
RREP168	<a href="#">Josephine Downs</a>
RREP169	<a href="#">Joyce Murray</a>
RREP170	<a href="#">Keith Reed</a>
RREP171	<a href="#">Trinity House</a>
RREP172	<a href="#">The Coal Authority</a>
RREP173	<a href="#">Tom Tamplin</a>
RREP174	<a href="#">Mr &amp; Mrs Carr</a>
RREP175	<a href="#">North Tyneside FOE</a>
RREP176	<a href="#">K Schneider</a>
RREP177	<a href="#">Natural England</a>
RREP178	<a href="#">Paul Crossland</a>
RREP179	<a href="#">Robert Middlebrook</a>
RREP180	<a href="#">Komal Middlebrook</a>
RREP181	<a href="#">John Ratcliff</a>
RREP182	<a href="#">Miss Ruth Middlebrook</a>
RREP183	<a href="#">Blyth Harbour Commission</a>
RREP184	<a href="#">Benjamin Healey</a>
RREP185	<a href="#">Northumberland National Park Authority</a>
RREP186	<a href="#">Margaret Metcalfe</a>
RREP187	<a href="#">Joy Metcalfe</a>
RREP188	<a href="#">Mrs E Gibbs</a>
RREP189	<a href="#">Mrs I Hogg</a>
RREP190	<a href="#">Mrs M Armstrong</a>
RREP191	<a href="#">Carol Crossland</a>
RREP192	<a href="#">Mrs E Sample</a>
RREP193	<a href="#">Homes and Communities Agency</a>
RREP194	<a href="#">Helen Middlebrook</a>
RREP195	<a href="#">Health Protection Agency</a>
RREP196	<a href="#">Mr G Linley</a>
RREP197	<a href="#">Mrs V Linley</a>
RREP198	<a href="#">North Blyth Social Club</a>
RREP199	<a href="#">Mrs J Keenlyside</a>
RREP200	<a href="#">Mrs H Spratt</a>
RREP201	<a href="#">Mr and Mrs B Charlton</a>
RREP202	<a href="#">Alan Middlebrook</a>
RREP203	<a href="#">Highways Agency</a>
RREP204	<a href="#">Marine Management Organisation</a>
<b>REPRESENTATIONS</b>	
<b>Post submission changes</b>	



REP1	<a href="#">120522_EN010016_Section 106 Cover Letter</a>
REP2	<a href="#">120514_EN010016_Section 106 agreement - Final</a>
REP3	<a href="#">120926_EN010016_Cover letter and additional information to North Blyth Energy Limited's submission</a> <i>NBEL's rule 8 submissions scheduled for 26 September 2012</i>
REP4	<a href="#">120926_EN010016_Revised draft Development Consent Order and Deemed Marine Licence v2.0</a>
REP5	<a href="#">120926_EN010016_Revised Explanatory Memorandum v2.0</a>
REP6	<a href="#">15.1 - Additions, Omissions and Errors from the original application</a>
REP7	<a href="#">15.2.2 - Bored Pile Wall - Method Statement</a>
REP8	<a href="#">15.2.3 - Statement of Reasons - Erratum</a>
REP9	<a href="#">121130_EN010016_33.1 - Additions, Omissions and Errors from the original application</a>
REP10	<a href="#">121130_EN010016_Revised draft Development Consent Order and Deemed Marine Licence v3.0</a>
REP11	<a href="#">121130_EN010016_Revised Explanatory Memorandum v3.0</a>
REP12	<a href="#">121130_EN010016_33.4 - Email - EA to NBEL regarding draft DCO</a>
REP13	<a href="#">121214_EN010016_41.1 - Cover letter for the developer's additional submission on 14 December 2012</a>
REP14	<a href="#">121214_EN010016_40.1 - Contents list for the additional submission provided on 14 December 2012</a>
REP15	<a href="#">121214_EN010016_42.1 - Revised draft Development Consent Order and Deemed Marine Licence v4.0</a>
REP16	<a href="#">121214_EN010016_42.3 - Revised Explanatory Memorandum v4.0</a>
REP17	<a href="#">130111_EN010016_61.1 - Cover letter</a> <i>Cover letter for NBEL's submission relating to DCO hearing on 9 January 2013</i>
REP18	<a href="#">130111_EN010016_62.1 - Revised draft Development Consent Order and Deemed Marine Licence - clean version.v5.0</a>
REP19	<a href="#">130111_EN010016_62.3 - Summary of changes to draft DCO and DML following Specific Issues Hearing - 9 January 2013v 5.0</a>
REP63	<a href="#">130125_EN010016_80.1 - Contents</a> <i>Contents list for NBEL's additional submission relating to the DCO hearing on 9 January 2013</i>
REP64	<a href="#">130125_EN010016_81.1 - Cover letter</a>
REP65	<a href="#">130125_EN010016_81.1.1 - Drawing for Section 278 Agreement</a>
REP66	<a href="#">130125_EN010016_82.1 - Revised Draft Development Consent Order including deemed Marine Licence v6.0 - clean</a>

REP67	<a href="#">130125_EN010016_82.3 - Revised Explanatory Memorandum v5.0 - clean</a>
REP68	<a href="#">130125_EN010016_82.5 - Report on revisions to draft DCO including DML</a>
REP69	<a href="#">130123_EN010016_82.5.1 - Email from MMO to NBEL regards changes to draft DCO &amp; DML</a>
REP70	<a href="#">130124_EN010016_82.5.2 - Email from NE to NBEL regards changes to draft DCO &amp; DML</a>
REP71	<a href="#">130125_EN010016_82.5.3 - Email from EA to NBEL regards changes to draft DCO &amp; DML</a>
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REP74	<a href="#">130201_EN010016_90.1 - Contents</a> <i>Contents list for NBEL's final Submission dated 1 February 2013</i>
REP75	<a href="#">130201_EN010016_91.1 - Cover letter</a> <i>Cover letter for NBEL's final submission dated 1 February 2013</i>
REP76	<a href="#">130201_EN010016_92.1 - draft Development Consent Order including Deemed Marine License v7.0</a>
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REP81	<a href="#">130201_EN010016_93.1.4 - Email from NCC to NBEL regards changes to draft DCO &amp; DML</a>
REP82	<a href="#">130201_EN010016_93.1.5 - Letter to RWE - Undertaking</a>
<b>Comments on Relevant Representations</b>	
REP20	<a href="#">CoRR-0001_Comments on Relevant Representations by Chris Lawson, North Blyth Energy Limited</a>
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<b>Written representations</b>	
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REP23	<a href="#">WR-0002 Written Representation Philip Harris</a>
REP24	<a href="#">WR-0003 Written Representation Chris Smith Natural England</a>

REP25	<a href="#">WR-0004 Written Representation Cameron Sked Environment Agency</a>
REP26	<a href="#">WR-0005 Written Representation MMO</a>
REP27	<a href="#">WR-0006 Written Representation Paul &amp; Carol Crossland</a>
REP28	<a href="#">WR0007 Written Representation Chris Lawson, North Blyth Energy</a>
<b>Local Impact Reports</b>	
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REP31	<a href="#">R1Q-0002 Response to First Questions Cameron Sked, Environment Agency</a>
REP32	<a href="#">R1Q-0003 Response to First Questions Alan Todd, Port of Blyth</a>
REP33	<a href="#">R1Q-0004 Response to First Written Questions Laura Calvert, MMO</a>
REP34	<a href="#">R1Q-0005 Response to first questions Mary Morrey, Health Protection Agency</a>
REP35	<a href="#">R1Q-0006 Response to First Question Chris Lawson North Blyth Energy Limited</a>
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REP39	<a href="#">CoWR-0001 Comments on the Written Representations Chris Lawson - NBEL Appendices 1-6</a>
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REP41	<a href="#">CoLIR-0002 Comments on Local Impact Report by Chris Lawson - NBEL</a>
REP42	<a href="#">CoLIR-0002 Comments on Local Impact Report by Chris Lawson - NBEL Appendix 1</a>
REP43	<a href="#">CoR1Q-0001 Comments on responses to first ExA's questions Chris Lawson - NBEL</a> <i>Includes NBEL's response to Rule 17 regarding Northumberland's late response to First round of questions</i>
REP44	<a href="#">CoR1Q-0001 Comments on responses to first ExA's questions Chris Lawson - NBEL Appendices 1-3</a>

	<i>Includes NBEL's response to Rule 17 regarding Northumberland's late response to First round of questions</i>
<b>Responses to Second Round of Questions</b>	
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REP46	<a href="#">R2Q-0002 Response to second round of question, Chris Lawson, North Blyth Energy Limited</a>
REP47	<a href="#">R2Q-0002 Response to second round of question, Chris Lawson, North Blyth Energy Limited, appendices 1-4</a>
REP48	<a href="#">R2Q-0003 Response to second round of question, Cameron Sked, Environment Agency</a>
<b>Other Comments</b>	
REP49	<a href="#">OC-0001 Comments on Transport Report (Doc 53.2) by Mr and Mrs Crossland</a>
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REP85	<a href="#">OC-0004 Comments on Friends of the Earth's Open Floor Hearing written submission by NBEL</a>
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REP50	<a href="#">CoRQ2-0001 Comments on second round of question responses Chris Lawson NBEL</a>
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REP56	<a href="#">R17.1-0006 Rule 17 response from Carol &amp; Paul Crossland</a>
REP43	<a href="#">CoR1Q-0001 Comments on responses to first ExA's questions Chris Lawson - NBEL</a> <i>Includes NBEL's response to Rule 17 regarding Northumberland's late response to First round of questions</i>
REP44	<a href="#">CoR1Q-0001 Comments on responses to first ExA's questions Chris Lawson - NBEL Appendices 1-3</a>

	<i>Includes NBEL's response to Rule 17 regarding Northumberland's late response to First round of questions</i>
<b>Response to Rule 17 letter Issued to Northumberland County Council (18 December 2012)</b>	
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REP61	<a href="#">R17.3-0002_R17_response_from_NBEL_(Doc_72.1.1)</a>
REP62	<a href="#">R17.3-0003_R17_response_from_NBEL_(Doc_72.1.3)</a>
<b>Response from NBEL to the R17 Letter 3 January 2013</b>	
PD21	<a href="#">130103_EN010016_Rule_17_letter_to_all_IPs_requesting_response_to_RIES</a>
PD22	<a href="#">130103_EN010016_RIES</a>
REP86	<a href="#">R17.4-0001_Rule_17_response_from_Leslie_Dalton</a>
REP87	<a href="#">R17.4-0002_Rule_17_response_from_Laura_Jade_Calvert,_Marine_Management_Organisation</a>
REP88	<a href="#">R17.4-0003_Rule_17_Response_from_Colin_Godfrey,_Natural_England</a>
REP57	<a href="#">R17.4-0004_Rule_17_Response_from_Chris_Lawson,_NBEL</a>
<b>Response from NBEL to the R17 Letter 14 January 2013</b>	
PD24	<a href="#">130114_EN010016_Rule_17_letter_to_the_Environment_Agency</a>
REP58	<a href="#">R17.5-0001_Rule_17_response_from_Cameron_Sked,_Environment_Agency</a>
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AS1	<a href="#">120606_EN010016_Late_RR_from_NorthumbrianWater</a>
AS2	<a href="#">120611_EN010016_RR_from_the_Environment_Agency_but_not_in_the_proscribed_form</a>
AS3	<a href="#">120611_EN010016_Scottish_Border_RR_Late</a>

AS4	<a href="#">121001_EN010016_Late WR from Margaret Lake, Network Rail</a>
AS5	<a href="#">AS-0001_Jane Wakeham, Network Rail</a> <i>Supporting material for Network Rail's letter dated 1 October 2012 (Margaret Lake)</i>
AS6	<a href="#">AS-0002_Mathew Trigg, RWE Npower</a> <i>Letter regarding RWE Npower's site adjacent to NBEL's proposed biomass plant</i>
AS7	<a href="#">AS-0003_Steve Manchee, Tyneside Friends of the Earth</a> <i>FoE comments on NBEL's comments on written representations document 23.1</i>
AS8	<a href="#">AS-0004_Anna Gibb, Trinity House</a> <i>Trinity House's request for changes to the DCO and DML dated 8 January 2013</i>
AS9	<a href="#">AS-0005_Chris Lawson, North Blyth Energy Limited</a> <i>Email from NBEL to Trinity House accepting the changes suggested in their letter dated 8 January 2013</i>
AS10	<a href="#">AS-0007_Philip Harris</a> <i>Additional submission from P Harris re carbon neutral status, air quality and health</i>
AS11	<a href="#">130110_EN010016_Protective provision for Network Rail (Schedule 5)[1]</a>
AS12	<a href="#">130118_EN010016_Doc 74.1 Draft Unilateral Undertaking - Landscape mitigation and Highways</a>
AS13	<a href="#">130118_EN010016_Doc 74.1.1 Secondary Mitigation Plan</a>
AS14	<a href="#">130118_EN010016_Doc 74.2 Update to Secondary Mitigation Proposals</a>
AS15	<a href="#">130118_EN010016_Doc 74.2.1 Updated Cross Section Location Plan (figure 9.46)</a>
AS16	<a href="#">130118_EN010016_Doc 74.2.2 Updated Section A-A (figure 9.49)</a>
AS17	<a href="#">130118_EN010016_Doc 74.2.3 Updated Section B-B (figure 9.50)</a>
AS18	<a href="#">130118_EN010016_Doc 74.2.4 Updated Section C-C (figure 9.51)</a>
AS19	<a href="#">AS-0009_Chris Lawson, NBEL - 84.1.1 - Updated Secondary Mitigation Plan (update of document 74.1.1)</a>
AS20	<a href="#">AS-0008_Chris Lawson, NBEL - 84.1 - DRAFT Unilateral Undertaking (update of document 74.1)</a>
AS21	<a href="#">AS-0010_Chris Lawson, NBEL - 84.1.2 - DRAFT Unilateral Undertaking - Appendix 2</a>
AS22	<a href="#">AS-0011_Chris Lawson, NBEL - 94.1 -Unilateral Undertaking – signed</a>
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HEA1	<a href="#">120802_EN010016_Preliminary Meeting Audio Recording</a>
<b>Issue Specific Hearing on the DCO 11 October 2012</b>	

PD15	<a href="#">121003 EN010016 Agenda for SI Hearing on the draft DCO</a>
HEA2	<a href="#">ISH1-0001 - MMO Written Summary of Oral Case put forward at Issue Specific Hearing on 11.10.12</a>
HEA3	<a href="#">ISH1-0002 - Natural England Written Summary of Oral Case put forward at Issue Specific Hearing on 11.10.12</a>
HEA4	<a href="#">ISH1-0003 - Steve Manchee, FOE Written Summary of Oral Case put forward at Issue Specific Hearing on 11.10.12</a>
HEA5	<a href="#">ISH1-0004 - Chris Lawson, NBEL Written Summary of Oral Case put forward at Issue Specific Hearing on 11.10.12</a>
HEA6	<a href="#">ISH1-0004 - Chris Lawson, NBEL Written Summary of Oral Case put forward at Issue Specific Hearing on 11.10.12 Appendces 1-3</a>
HEA7	<a href="#">121012 EN010016 P Harris summary of the oral representations made at the DCO hearing</a> <i>P Harris summary of other parties oral statements. Submission made on 12 October 2012 and subsequently accepted by the ExA on 10 November 2012.</i>
HEA8	<a href="#">121011 EN010016 Hearing Audio Recording</a>
<b>Issue Specific Hearing on Landscape, Design and Visual Impact 4 December 2012</b>	
PD16	<a href="#">121127 EN010016 Agendas and information for Open Floor Hearings &amp; Issue Specific Hearings letter</a>
HEA9	<a href="#">121224 EN010016 50.1 - Contents</a> <i>List of NBEL's submissions following the issue specific hearings and open floor hearings held on 4 and 5 December 2012</i>
HEA10	<a href="#">121224 EN010016 51.1 - Cover letter</a> <i>NBEL's cover letter following the issue specific hearings and open floor hearings held on 4 and 5 December 2012</i>
HEA11	<a href="#">121224 EN010016 51.2 - Email EA to NBEL regards draft DCO</a>
HEA12	<a href="#">OPH1-0002 Mr and Mrs Crossland's summary of oral case at the open floor hearing on 05.12.12</a> <i>Response contains Mr and Mrs Crossland's summary from both Issue Specific Hearing on Landscape, Design, and Visual Impact on 4 December 2012 and the Open Floor Hearing on 5 December 2012</i>
HEA13	<a href="#">ISH-0002 Chris Lawson, NBEL, Written summary of Oral Case put forward at Issue Specific Hearing on Landscape and Visual Impact and Design</a>
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HEA18	<a href="#">121224 EN010016 52.2.4 - Industrial context photographic review - sheet 4 - Fig 9.57</a>

HEA19	<a href="#">121224_EN010016_52.2.5 - Industrial context photographic review - sheet 5 - Fig 9.58</a>
HEA20	<a href="#">121224_EN010016_52.3.1 - Landscape Mitigation Report Following Specific Issue Hearing</a>
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HEA27	<a href="#">121224_EN010016_52.4 - Night Time Lighting Assessment</a>
HEA28	<a href="#">121224_EN010016_52.4.1 - Night time lighting assessment figures</a>
HEA29	<a href="#">121204_EN010016_Issue Specific Hearing on Landscape, Design and Visual Impact audio recording</a>
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PD16	<a href="#">121127_EN010016_Agendas and information for Open Floor Hearings &amp; Issue Specific Hearings letter</a>
HEA30	<a href="#">ISH-0001_Chris Lawson, NBEL, Written summary of Oral Case put forward at Issue Specific Hearing on Access &amp; Transport</a>
HEA31	<a href="#">121224_EN010016_53.2 - Transport Report following Specific Issue Hearing - December 2012</a>
HEA32	<a href="#">121224_EN010016_53.2.1 email from NCC</a>
HEA33	<a href="#">121224_EN010016_53.2.2 email from SKM to NCC</a>
HEA34	<a href="#">121204_EN010016_Issue Specific Hearing on Access and Transport audio recording</a>
<b>Issue Specific Hearing on Safety 5 December 2012</b>	
PD16	<a href="#">121127_EN010016_Agendas and information for Open Floor Hearings &amp; Issue Specific Hearings letter</a>
HEA35	<a href="#">ISH-0003_Chris Lawson, NBEL, Written summary of Oral Case put forward at Issue Specific Hearing on Safety</a>
HEA36	<a href="#">121224_EN010016_54.2 - Fire Risk and Mitigation Statement</a>
HEA37	<a href="#">121224_EN010016_54.2.1 - Building Regulation 2010 - Fire Safety</a>



HEA38	<a href="#">121224_EN010016_54.2.2 - ACE Technical Risks</a>
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<b>Open Floor Hearing 5 December 2012 at 2pm</b>	
PD16	<a href="#">121127_EN010016_Agendas and information for Open Floor Hearings &amp; Issue Specific Hearings letter</a>
HEA40	<a href="#">OPH1-0001_FOE written summary of oral case at Open Floor Hearing on 05.12.12</a>
HEA12	<a href="#">OPH1-0002_Mr and Mrs Crossland's summary of oral case at the open floor hearing on 05.12.12</a> <i>Response contains Mr and Mrs Crossland's summary from both Issue Specific Hearing on Landscape, Design, and Visual Impact on 4 December 2012 and the Open Floor Hearing on 5 December 2012</i>
HEA41	<a href="#">OPH1-0003_Chris Lawson, NBEL, written summary of oral case at the open floor hearing on 05.12.12</a>
HEA42	<a href="#">121205_EN010016_Open Floor Hearing afternoon session audio recording</a>
<b>Open Floor Hearing 5 December 2012 at 6pm</b>	
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HEA43	<a href="#">121205_EN010016_Open Floor Hearing evening session audio recording</a>
<b>Compulsory Acquisition Hearing 6 December 2012</b>	
PD17	<a href="#">121127_EN010016_Agenda and information for Compulsory Acquisition Hearing letter</a>
HEA44	<a href="#">CAH1-0001_RWE npower, Written summary of Oral Case put forward at Compulsory Acquisition Hearing on 6 December 2012</a>
HEA45	<a href="#">CAH1-0002_Chris Lawson,NBEL, Written summary of Oral Case put forward at Compulsory Acquisition Hearing on 6 December 2012</a>
HEA46	<a href="#">121206_EN010016_Compulsory Acquisition Hearing audio recording</a>
<b>Issue Specific Hearing on the DCO 9 January 2013</b>	
PD23	<a href="#">130103_EN010016_Agenda for Specific Issue Hearing on the draft Development Consent Order and draft Deemed Marine Licence 9 January 2013</a>
HEA47	<a href="#">130109_EN010015_Kevin Wylie, Northumberland Fire and Rescue Service</a>
HEA48	<a href="#">130108_EN010016_Signed Letter to Hazel Anderson from Bond Pearce dated 8 Jan 2013</a>
HEA49	<a href="#">130118_EN010016_Doc 73.1 Written Submissions from NBEL for Specific Issue Hearing 9 January 2013</a>

HEA50	<a href="#">130118_EN010016_Response from NBEL following Specific Issue Hearing 9 January 2013 - Doc 70.1 Contents Page</a>
HEA51	<a href="#">130118_EN010016_Doc 73.1.5 Letter from Trinity House dated 8 Jan 2013</a>
HEA52	<a href="#">130118_EN010016_Response from NBEL following Specific Issue Hearing 9 January 2013 - Doc 71.1 Cover Letter</a>
HEA53	<a href="#">130118_EN010016_Doc 73.1.6 Email from NCC Highways Authority to NBEL dated 10 Jan 2013</a>
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SOCG6	<a href="#">SoCG-0003_Statement of Common Ground between NBEL &amp; MMO Appendices 1-4</a>
SOCG7	<a href="#">SoCG-0004_Statement of Common Ground between NBEL &amp; Northumberland County Council</a>
SOCG8	<a href="#">SoCG-0004_Statement of Common Ground between NBEL &amp; Northumberland County Council Appendices 1-2</a>
SOCG9	<a href="#">SoCG-0005_Statement of Common Ground between NBEL &amp; Blyth Harbour Commission</a>
SOCG10	<a href="#">SoCG-0005_Statement of Common Ground between NBEL &amp; Blyth Harbour Commission Appendix 1</a>

**APPENDIX G – CONCLUSIONS IN RELATION TO THE EFFECTS ON  
THE INTEGRITY OF EUROPEAN SITES**

REPORT on the IMPLICATIONS  
for EUROPEAN SITES  
**Blyth Biomass Power Station**

An Examining Authority report prepared with the  
support of the Planning Inspectorate Secretariat

Version 1.0

January 2012

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# 1.0 INTRODUCTION

## Background

- 1.1 North Blyth Energy Ltd (NBEL) (the Applicant) has applied to the Secretary of State for a development consent order (DCO) under section 37 of the Planning Act 2008 (as amended) for the proposed North Blyth Biomass Power Station. The Secretary of State has appointed an Examining Authority (ExA) to conduct an examination of the application, to report its findings and conclusions, and to make a recommendation to the Secretary of State as to the decision to be made on the application.
- 1.2 The Secretary of State is the competent authority for the purposes of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) and Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) ("the 2007 Offshore Regulations").
- 1.3 The findings and conclusions on nature conservation issues reported by the ExA will assist the Secretary of State in making an appropriate assessment under the Habitats Regulations. This report compiles, documents and signposts information received during the examination of the DCO application. It is issued to ensure that the statutory nature conservation body, Natural England (NE), are consulted and this process may be relied on by the Secretary of State for the purposes of Regulation 61(3) of the Habitats Regulations. This report, and the consultation responses received upon it, will inform the ExA's report to the Secretary of State as to:
  - the implications of the project for the European Sites in view of their conservation objectives, and
  - whether the integrity of any of the European sites will be adversely affected.

## Documents

- 1.4 The following documents have been used to inform this report:

### *Application Documents*

- Ecology Consulting. 2012a. North Blyth Biomass Project: The proposed North Blyth Biomass Power Station Order. Ornithology (Environmental Statement Chapter 12). Document 6.1.12.
- Pisces Conservation Ltd. 2012. North Blyth Biomass Project: The proposed North Blyth Biomass Power Station Order. Ornithology (Environmental Statement Chapter 11). Document 6.1.11.

- Ecology Consulting. 2012b. North Blyth Biomass Project: The proposed North Blyth Biomass Power Station Order Habitats Regulations Assessment (HRA) Report. Document 5.4.

### *Representations*

- NE's relevant representation – 25 September 2012
- Environment Agency's (EA) written representation – 26 September 2012
- Marine Management Organisation (MMO) written representation – 26 September 2012
- NBEL's comments on relevant representations Appendices 19 Document references 12.2.19.1 & 12.2.19.2), 20 (Document 12.2.20) & 21 (Document reference 12.2.21)

### *Statements of Common Ground*

- The Statement of Common Ground (SoCG) between NBEL and NE regarding amongst other things the approach to the Habitat Regulation Assessment dated 27 October 2012 (Document Ref: 27.1.1)
- The SoCG between NBEL and MMO regarding amongst other things the approach to Environmental Assessment dated 23 October 2012 (Document Ref: 27.3.1)
- The SoCG between NBEL and EA regarding amongst other things the approach to Environmental Assessment dated 24 October 2012 (Document Ref: 02377-003223 Issue: 01)

## Structure of the Report

1.5 The report is in two parts:

- (i) The first part comprises a screening matrix for the European (Natura 2000) sites that might potentially be affected by the North Blyth Biomass Power Station. This matrix collates evidence on whether the project is likely to have significant effects on the key features of each European site.
- (ii) The second part comprises a matrix summarising the anticipated effects on the integrity of the site as a result of the North Blyth Biomass Power Station. The site for which a likely significant effect (LSE) on one or more of its features is identified within the screening matrix is included within this part of the report.

## List of Abbreviations

- DCO: Development Consent Order
- EA: Environment Agency

- ES: Environmental Statement
- ExA: Examining authority
- HRA: Habitats Regulations Assessment
- LSE: Likely Significant Effect
- MMO: Marine Management Organisation
- NBEL: North Blyth Energy Limited
- NE: Natural England
- SoCG: Statement of Common Ground
- SoS: Secretary of State
- SPA: Special Protection Area

## The Matrices

- 1.6 The screening and integrity matrices presented within this report are based on those submitted by the Applicant on 26 September 2012 in response to the first round of questions issued by the ExA in the Rule 8 letter (15 August 2012). The ExA, with support from the Secretariat, has updated the matrices to incorporate evidence and comments to date from the Applicant and other interested parties. Evidence supporting the conclusions is detailed in footnotes for each table with reference to relevant supporting documentation.

## Potential Impacts

- 1.7 Potential impacts upon the European sites which are considered within the Applicant's HRA report are shown in the table below. For ease of presentation, impacts have been grouped where appropriate in the updated matrices contained within this report.

<b>Impacts in submission information</b>	<b>Presented in screening and integrity matrices as</b>
Disturbance from noise, traffic, the physical construction of the Project, the structure of the Facility Site (including impacts on bird flight activity) and increased human activity (Construction, Operation and Decommissioning)	Disturbance
Installation of the cooling water intake (adjacent, but linked to the estuary) and outfall pipe (into the sea) (Construction)	
Impacts on air quality (Operation);	Effects on supporting habitats
Impacts on aquatic ecology resulting in effects on the bird food resource, including water	



<b>Impacts in submission information</b>	<b>Presented in screening and integrity matrices as</b>
temperature change (cooling discharge into the sea), biocide release and water extraction from the estuary (Operation)	
Lighting – potentially disrupting migrant birds (Construction, Operation and Decommissioning)	Effects on migrant birds

## 2.0 SCREENING FOR LIKELY SIGNIFICANT EFFECTS

2.1 The project is not connected with, or necessary to the management for nature conservation of, the European site considered within the assessment. The project has been assessed by the Applicant as potentially having a significant effect on a European site within its vicinity, either alone or in combination with other projects. It has been subject to a screening exercise by the Applicant for LSEs of the project in relation to all the sites potentially affected.

### European Sites

2.2 The European Sites identified by the Applicant within their HRA Report and screening matrices are:

- Northumbria Coast Special Protection Area (SPA)
- Northumbria Coast Ramsar site

2.3 As the designated site features are the same for both the SPA and Ramsar, the Northumbria Coast SPA and Ramsar sites have been considered together within this report.

### Screening Matrix Key

2.4 C = Construction

O = Operation

D = Decommissioning

✓ = Potential for Likely Significant Effect (LSE) cannot be excluded

✗ = Potential for LSE can be excluded

2.5 Evidence supporting the conclusions is detailed in footnotes for each table with reference to relevant supporting documentation. The Applicant's HRA report assumes that the effects of decommissioning will be similar to those generated by the construction phase of the project (paragraph 47 Appendix 2 of HRA Report (Document 5.4)).

Matrix 1: Northumbria Coast Special Protection Area (SPA) and Ramsar

Northumbria Coast SPA and Ramsar												
Distance to main site: 0.11km Distance to outfall pipeline: From 0km (but 20m below ground surface) to 0.77km												
European site features	Likely Effects of NSIP (phase of development)											
	Disturbance			Effects on supporting habitats			Effects on migrant birds			In-combination effects		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
<i>Sterna albifrons</i> , Little Tern (breeding)	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>	<b>x<sub>a</sub></b>
<i>Calidris maritima</i> , Purple Sandpiper (overwintering)	<b>✓<sub>b</sub></b>	<b>✓<sub>b</sub></b>	<b>✓<sub>b</sub></b>	<b>x<sub>c</sub></b>	<b>x<sub>c</sub></b>	<b>x<sub>c</sub></b>	<b>x<sub>d</sub></b>	<b>x<sub>d</sub></b>	<b>x<sub>d</sub></b>	<b>✓<sub>b</sub></b>	<b>✓<sub>b</sub></b>	<b>✓<sub>b</sub></b>
<i>Arenaria interpres</i> , Ruddy Turnstone (overwintering)	<b>✓<sub>e</sub></b>	<b>✓<sub>e</sub></b>	<b>✓<sub>e</sub></b>	<b>x<sub>c</sub></b>	<b>x<sub>c</sub></b>	<b>x<sub>c</sub></b>	<b>x<sub>d</sub></b>	<b>x<sub>d</sub></b>	<b>x<sub>d</sub></b>	<b>✓<sub>e</sub></b>	<b>✓<sub>e</sub></b>	<b>✓<sub>e</sub></b>

**Evidence:**

- a. No records of the species within the impact zone during the baseline surveys and none within the survey area (paragraph 27 of HRA Report (Document 5.4) & Chapter 12 of ES (Document 6.1.12)). NE agrees that the project is not likely to have a significant effect on the feature either alone or in combination with other plans or projects (NE-NBEL SoCG paragraph 4.5).

- b. Peak count of 34 at Crab Law (approximately 1km from the Facility Site). Potential for higher numbers of birds to use this area, so LSE cannot be ruled out, alone or in combination with other plans or projects (paragraph 34 of HRA Report (Document 5.4)) & Chapter 12 of ES (Document 6.1.12)).
- c. Emissions released during the operation of the plant could lead to acid and nutrient deposition on sensitive SPA habitats. The suite of mitigation measures proposed will avoid LSE (paragraph 44 Appendix 2 of HRA Report (Document 5.4) & Chapter 7 of ES (Document 6.1.7)). Water quality could be affected by the addition of biocides, boiler blowdown and water treatment discharges, with a knock-on effect on the birds' foraging resources during operation (paragraph 38 Appendix 2 of HRA Report (Document 5.4) & paragraphs 11.5.11-11.6.4 & 11.6.20-11.7.6 Chapter 11 of ES (Document 6.1.11)). Chapter 11 of ES (Document 6.1.11) paragraphs 11.5.45-11.5.46 considers that the position of the proposed outfall location coupled with monitoring prior to discharge to ensure that the residual chloride level at discharge does not exceed 0.2 mg/l will reduce effects on aquatic life in the North Sea to negligible levels. Further the chemical additions to discharge from boiler blowdown and water treatment discharge would be low even at peak flow and would not have a significant impact on the environment Chapter 11 of ES (Document 6.1.11).
- d. Bright lighting during the construction or operational phases of the project could attract migrant birds away from their normal routes. It could also affect existing roosts or other habitats used by birds at night. Mitigation measures would be implemented to avoid any LSE (paragraphs 35-42 of HRA Report (Document 5.4)). NE-NBEL SoCG states that the existing requirements (12(2)(a), 16 and 33 of the DCO Schedule 4) provides sufficient protection for migrant birds from the effects of lighting in the SPA (see line 5 of table in section 2.2 of NE-NBEL SoCG)
- e. Turnstone were regularly recorded (peak 25) within the potential impact zone of the proposed development, including roosting and feeding birds, so LSE could not be ruled out, alone or in combination with other plans or projects (paragraphs 32-33 of HRA Report (Document 5.4)).

On the basis of the evidence available the applicant's report considered the effects resulting from the proposed development on the integrity of the following sites:

- Northumbria Coast SPA
- Northumbria Ramsar site

This has been agreed with Natural England in paragraph 4.2 of the NE-NBEL SoCG.

## 3.0 EFFECTS ON INTEGRITY

### Integrity Matrices Key

3.1 C = Construction

O = Operation

D = Decommissioning

✓ = Adverse effect on integrity cannot be excluded

✗ = Adverse effect on integrity can be excluded

3.2 Evidence supporting the conclusions is detailed in footnotes for each table with reference to relevant supporting documentation. The Applicant's HRA report assumes that the effects of decommissioning will be similar to those generated by the construction phase of the project (paragraph 47 Appendix 2 of HRA Report (Document 5.4)).

### North Norfolk Coast SPA

3.3 Conservation objectives:

With regard to the individual species and/or assemblage of species for which the site has been classified ("the Qualifying Features" listed below);

**Avoid the deterioration of the habitats of the qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Birds Directive.**

Subject to natural change, to maintain or restore:

- The extent and distribution of the habitats of the qualifying features;
- The structure and function of the habitats of the qualifying features;
- The supporting processes on which the habitats of the qualifying features rely;
- The populations of the qualifying features;

- The distribution of the qualifying features within the site.

#### 3.4 Qualifying Features:

- A148 *Calidris maritima*; Purple sandpiper (Non-breeding)
- A169 *Arenaria interpres*; Ruddy turnstone (Non-breeding)
- A195 *Sterna albifrons*; Little tern (Breeding)

([http://www.naturalengland.org.uk/Images/UK9006131-Northumbria-Coast-SPA\\_tcm6-32236.pdf](http://www.naturalengland.org.uk/Images/UK9006131-Northumbria-Coast-SPA_tcm6-32236.pdf))

## Matrix 2: Effects on Integrity: Project alone

European site	Northumbria Coast SPA and Ramsar Site		
European site features	Disturbance		
	Construction	Operation	Decommissioning
<i>Calidris maritima</i> , Purple Sandpiper (overwintering)	<b>x a,c,d</b>	<b>x a,e</b>	<b>x a,f</b>
<i>Arenaria interpres</i> , Ruddy Turnstone (overwintering)	<b>x b,c,d</b>	<b>x b,e</b>	<b>x b,f</b>

### Evidence:

- a. Desk study and field surveys all showed that the Application site and its surrounds are not important for purple sandpiper (paragraphs 17-21 & 61 Appendix 2 of HRA Report (Document 5.4) & Chapter 12 of ES (Document 6.1.12)).
- b. Birds may be disturbed by human activity, particularly during the construction phase. During the baseline surveys relatively low numbers of birds were recorded within the area where disturbance is likely to occur. Ruddy Turnstone is a species with a low sensitivity to disturbance. There is a roost in close proximity to the site at North Blyth Staithes. The works that would take place in close proximity to the roost would be temporary in nature (paragraphs 50-53 Appendix 2 of HRA Report (Document 5.4) & Chapter 12 of ES). NE agrees that the project will not adversely affect the integrity of the SPA (paragraph 4.7 of the NE-NBEL SoCG).
- c. Mitigation measures secured through requirement 12 of the DCO and the Construction Environmental Management Plan will also reduce visual disturbance. Measures will include limiting works on the cooling water infrastructure to the period between April and September when the birds are not present & putting board fencing around the construction site. Further information on the 'marker pile' and installation method for rock pins will be secured through a condition on the



Deemed Marine Licence (table in section 2.2 of NE-NBEL SoCG NE agree that adequate mitigation has been secured to avoid adverse effects on integrity on the SPA (see table in section 2.2 & paragraph 4.7 of NE-NBEL SoCG).

- d. Noise generated by construction, particularly as a result of piling, was assessed by using modelling to define the zone around the development likely to be affected. Both bird species have been recorded using the zone where significant disturbance effects are possible (paragraphs 28 & 32 of HRA Report (Document 5.4)). Mitigation measures include:
- A noise limit of 55 Db LA max (after mitigation) within the SPA during the winter months, beginning in August, secured through a condition on the DML (table in section 2.2 NE-NBEL SoCG, and paragraphs 35-36 of HRA Report (Document 5.4)).
  - Piling Method Statement to be agreed by Northumbria County Council in consultation with NE & the MMO. Secured by DCO requirement 30.
  - Limiting works on the cooling water infrastructure to the period between April and September.
  - Further information on the 'marker pile' and installation method for rock pins will be secured through a condition on the Deemed Marine Licence (paragraph 4.7 and table in section 2.2 of NE-NBEL SoCG NE agree that adequate mitigation has been secured to avoid adverse effects on integrity on the SPA.
- NE agree that this will secure sufficient mitigation to avoid adverse effects on integrity (table in section 2.2 & paragraphs 6.7.1-7.7.2 of NE-NBEL SoCG)
- e. Noise generated by operation was assessed in the same way as construction (paragraphs 28 & 32 of HRA Report (Document 5.4)). Mitigation measures are:
- Restriction on the testing of steam valves, or other activities during maintenance causing high intermittent noise levels, to the months April - September, unless otherwise agreed with NCC and Natural England.
  - During commissioning phase noise from steam purging during months (August - March) would be limited to no greater than 55 dB(A) LA Max within the SPA, unless otherwise agreed with NCC and Natural England.
- NE agrees that this will secure sufficient mitigation to avoid adverse effects on integrity (paragraph 37 of HRA Report (Document 5.4), and table in Section 2.2, paragraphs 4.7 & 6.7.1-6.7.2 of NE-NBEL SoCG).
- f. The mitigation measures implemented during the construction phase would also be implemented during the decommissioning phase (paragraph 42 of HRA Report (Document 5.4)).

### Matrix 3: Effects on Integrity: In-Combination

European site	Northumbria Coast SPA and Ramsar Site		
European site features	In-combination effects		
	Construction	Operation	Decommissioning
<i>Calidris maritima</i> , Purple Sandpiper (overwintering)	<b>xa</b>	<b>xa</b>	<b>xa</b>
<i>Arenaria interpres</i> , Ruddy Turnstone (overwintering)	<b>xa</b>	<b>xa</b>	<b>xa</b>

#### Evidence:

- a. The rationale for deciding which plans or projects could act in combination with NBEL's project was based on considering which other projects either share the same 'receptors' (purple sandpiper and ruddy turnstone) or which could affect the same local populations (NBEL comments on relevant representations Appendix 19). These projects are: Wansbeck Blyth Harbour, Lynemouth and Bewick Drift windfarms and warehousing for the Port of Blyth biomass store. The mitigation measures proposed for the project (see footnotes for Matrix 2) are viewed by the applicant as being sufficient to ensure that effects from the NBEL project are reduced to the point where they could not contribute to an adverse effect on integrity (paragraphs 56-59 of HRA Report (Document 5.4)). NE agrees that an adverse effect on integrity from in-combination effects is unlikely (table in section 2.2 and paragraph 4.7 of NE-NBEL SoCG).

**APPENDIX H – V.7 DRAFT DEVELOPMENT CONSENT ORDER AND  
MARINE LICENCE**

# **NORTH BLYTH BIOMASS PROJECT**

## **THE PROPOSED NORTH BLYTH BIOMASS POWER STATION ORDER**

**Application Reference: EN010016**

Document Title:

Draft Development Consent Order including Deemed Marine Licence

Document Number: 92.1

Document Title: Draft Development Consent Order including Deemed Marine Licence

Revision History

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05	11 January 2013	Bond Pearce LLP
06	25 January 2013	Bond Pearce LLP
07	1 February 2013	Bond Pearce LLP

201X No.XXXX

**INFRASTRUCTURE PLANNING, ENGLAND**

North Blyth Biomass Power Station Order 201x

*Made* \*\*\*

*Coming into force* \*\*\*

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- SCHEDULE 1 - AUTHORISED DEVELOPMENT  
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An application has been made in accordance with The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order granting development consent;

The application was examined by an Examining authority under Part 4 of the Planning Act 2008;

The Examining authority has considered the application and the relevant representations made in relation to it, and has reported its recommendation to the Secretary of State as decision-maker under section 83(1)(b) of that Act;

The decision-maker has decided under section 104 of that Act to make an order granting development consent;

The decision-maker makes the following Order under section 114 of that Act:

### **Citation and commencement**

1. This Order may be cited as the North Blyth Biomass Power Station Order 201X and shall come into force on [●] 201X.

### **Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

- 
- (a) S.I. 2009/2264  
(b) 1961 c.33. Section 2(2) was amended by s193 of, and Paragraph 5 of Schedule 3 to, the Local Government, Planning and Land Act 1985(c.65). There are other amendments to the 1961 Act which are not relevant to this Order  
(c) 1965 c.56. Section 3 was amended by Section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4, as amended by Section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985(c.71) Section 5 was amended by Section 67 and 80 of, and Part 2 of Schedule 10 to, the Planning and Compensation Act 1991(c.34). Sub-section 1) of Section 11 and Section 3, 31 and 32 were amended by Section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1968(c.67) and by Section 14 of, and Paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by Section 56(2) of and Part 1 to Schedule 92 to, the Courts Act 1981 (c.23). Section 13 was amended by Section 139 of the Tribunals, Courts and Enforcement Act 2007(c.15). Section 20 was amended by Section 70 of, and Paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973(c.39) and by Section 14 of, and Paragraph 12 (2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order  
(d) 1980 c.66. Section 1(1) as amended by Section 21(2) of the New Roads and Street Works Act 1991(c.22). Sections 1(2), 1(3) and 1(4) were amended by Section 8 of, and Paragraph (1) of Schedule 4 to, the Local Government Act 1985(c.51). Section 1(2A) was inserted, and Section 1(3) was amended, by Section 22(1) of, and Paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994(c.19). Section 36(2) was amended by Section 4(1) of and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1975(c.71), by SI 2006/177 (the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006, by Section 4 of, and Paragraph 45(3) of Schedule 2 to, the

“the 1990 Act” means the Town and Country Planning Act 1990(a);

“the 2008 Act” means the Planning Act 2008(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 2009 Act” means the Marine and Coastal Access Act 2009(d);

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway”, “highway” and “highway authority” have the same meanings as in the 1980 Act;

“Commission” means the Blyth Harbour Commission;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

“design and access statement” means the design and access statement certified as such by the decision maker for the purposes of this Order;

“elevations plan” means the elevations plan certified as such by the decision-maker for the purposes of this Order;

“the environmental statement” means the environmental statement submitted by the undertaker and certified as the environmental statement by the decision-maker for the purposes of this Order;

“the heat radiation contour plan” means the heat radiation contour plan certified as such by the decision-maker for the purposes of this Order;

“the land plan” means the plans certified as the land plan by the decision-maker for the purposes of this Order;

“maintain” includes inspect, maintain, and repair the authorised development; and “maintenance” shall be construed accordingly;

“massing plan” means the massing plan certified as such by the decision-maker for the purposes of this Order;

“MMO” means the Marine Management Organisation;

“Order land” means the land shown on the land plan which is within the boundary of land required for or affected by the proposed development, and described in the book of reference;

“the Order limits” means the limits shown on the works plan within which the authorised development may be carried out;

“Owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(e);

“relevant planning authority” means Northumberland County Council as planning authority for the area in which the land to which the provisions of this Order apply is situated and its successors in function as planning authority;

“requirements” means a requirement set out in Schedule 4 (Requirements) to this Order;

“the scheduled works” means the works specified in Schedule 1 to this Order or any part of them or as the same may be varied pursuant to article 3;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

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(a) Planning (Consequential Provisions) Act 1990(c.11), by Section 64(1) (2) and (3) of the Transport and Works Act 1992(c.42) and by Section 57 of, and Paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000(c.37). 1990 c.8. Section 206(1) as amended by Section 192(8) of, and Paragraph 7 and 11 of Schedule 8 to, the Planning Act 2008(c.29) (*date in force to be appointed see s241(3), (4)(a),(c) of the 2008 Act*). There are other amendments to the 1990 Act which are not relevant to this Order.

(b) 2008c.29. Section 149A was inserted by Section 112(1) of, and paragraph 4 of Schedule 8 to, the Marine and Coastal Access Act 2009

(c) 1991.c22. Section 48(3A) was inserted by Section 124 of the Local Transport Act 2008(c.26). Section 79(4), 80(4) and 83(4) are amended by s40 of, and Schedule 1 to, the Traffic Management Act 2004(c.18).

(d) 2009 c.23

(e) 1981c.67. Section 7 was amended by s70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). There are other amendments to the 1981 Act which are not relevant to this Order.



“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part III of the 1991 Act;

“the Tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means in relation to any provision of this Order North Blyth Energy Limited or any person to whom the powers conferred by this Order are transferred in an agreement pursuant to article 7 or Section 156 of the 2008 Act;

“vessel” means a ship, boat, raft or water craft of any description and includes non-displacement craft, seaplanes and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or other amphibious vehicle;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

### **Development consent etc. granted by the Order**

**3.—**(1) Subject to the provisions of this Order and to the requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) The authorised development may be constructed in the lines or situations shown on the works plan and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

(3) The works comprised in works 1(v), 1(w), 3A-D, 4, 5 and 9 of the authorised development may be constructed within the limits of deviation shown on the works plan.

(4) In constructing or maintaining works 1(v), 1(w), 3A-D, 4, 5 and 9 the undertaker may deviate laterally from the lines or situations shown on the works plan within the limits of deviation.

### **Procedure in relation to approvals etc. under requirements**

**4.—**(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

(a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);

(b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

### **Maintenance of authorised development**

**5.** The undertaker may at any time maintain the authorised development, except to the extent that this Order including the requirements or an agreement made under this Order, provides otherwise.

### **Operation of generating station**

**6.—**(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised development for the purpose of generating electricity.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of a generating station.

### **Benefit of Order**

7.—(1) Except as provided for by this article, section 156(1) of the 2008 Act shall apply to the grant of development consent by this Order.

(2) Subject to paragraph (6), the undertaker may with the consent of the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order—

- (a) transfer to another person (the “transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (the “lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed,

except where paragraph (5) applies in which case no such consent shall be required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (4), shall include references to the transferee or lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(5) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; and
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made,
  - (ii) any such claim has been made and has been compromised or withdrawn,
  - (iii) compensation has been paid in final settlement of any such claim,
  - (iv) payment of compensation into court in lieu of settlement of any such claim has taken place, or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.

(6) The provisions of articles 13(1), 16(1), 19(1) and 22 shall have effect only for the benefit of the named undertaker and a person who is a transferee or lessee as is referred to in paragraph 2 and is also—

- (a) the transferee or lessee of the land occupied by Work No. 1, and
- (b) a person who holds a licence under the Electricity Act 1989.

### **Defence to proceedings in respect of statutory nuisance**

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within Paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or

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(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40 s61(9) and s65(8) where amended by Section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 41; or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Street works**

**9.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1); and all such other provisions as apply for the purpose of the provisions mentioned above.

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Agreements with street authorities**

**10.**—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Discharge of water**

**11.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulation 38 of the Environmental Permitting Regulations (England and Wales) 2010(b) (offences of polluting water).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### **Authority to survey and investigate the land**

**12.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) shall, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

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(a) 1991c.56. Section 106 was amended by Sections 36(2) and 99 of the Water Act 2003(c.37). There are other amendments to this Section which are not relevant to this Order.

(b) S.I. 2010/675.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

- (a) in land located within the highway boundary without the consent of the highway authority;
- (b) in a private street without the consent of the street authority, but such consent shall not be unreasonably withheld; or
- (c) in any coal seam without the consent of the Coal Authority.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Compulsory acquisition of land**

**13.**—(1) Subject to the provisions of Article 16, the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Compulsory acquisition of land – incorporation of the minerals code**

**14.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”;

### **Time limit for exercise of authority to acquire land compulsorily**

**15.** After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 18 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

### **Compulsory acquisition of rights**

**16.**—(1) The undertaker may only acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in plots 2 to 15 of the book of reference and shown coloured blue on the land plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 20 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Private rights of way**

**17.**—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement;  
or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry).

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 22 (statutory undertakers) applies.

(5) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land,
- (ii) the undertaker's appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(6) If any such agreement as is referred to in paragraph (5)(b)—

(a) is made with a person in or to whom the right of way is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**18.—**(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

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(a) 1991 c.66. Sections 2(3), 6(2) and 11(6) were amended by Section 4 of and Paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by Sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008(c.17). Paragraph 1 of Schedule 2 was amended by Section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988(c.50); Section 161(4) of, and Schedule 19 to, the Leasehold Reform Housing and Urban Development Act 1993(c.28); and Sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by Section 76 of, and Schedule 9 to, the Housing Act 1988 and Section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by Section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984(c.51). There are other amendments to the 1981 Act which are not relevant to this Order.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**19.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 13 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 20 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Acquisition of part of certain properties**

**20.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Tribunal.

(5) If on such a reference the Tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the Tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the Tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Rights under or over streets**

**21.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Statutory undertakers**

**22.**—(1) The undertaker may—



- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference; and
  - (b) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference.
- (2) Nothing in this Order shall authorise the undertaker to—
- (a) extinguish the rights of statutory undertakers in connection with their apparatus; or
  - (b) remove or reposition apparatus belonging to statutory undertakers.

### **Recovery of costs of new connections**

**23.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 22 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 22, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer, shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

### **Railway and navigation undertakings**

**24.**—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

### **Application of landlord and tenant law**

**25.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

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(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.  
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- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

26. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

### **Deemed licence for purposes of the 2009 Act**

27. The undertaker is deemed to be granted a licence under section 66 of the 2009 Act to carry out the works described in Schedule 3, subject to the provisions set out in that Schedule, which shall be treated as licence conditions.

### **Certification of plans etc**

28.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the design and access statement;
- (c) the elevations plan;
- (d) the environmental statement;
- (e) the heat radiation contour plan;
- (f) the land plan;
- (g) the massing plan; and
- (h) the works plan

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Arbitration**

29. Any difference under any provision of this Order, unless otherwise provided for other than a difference which falls to be determined by the Tribunal, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President from time to time of the Law Society of England and Wales.

### **Crown rights**

30.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker to take, use, enter

upon or in any manner interfere with any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—

- (a) Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) No interest in Crown land may be acquired compulsorily under this Order unless the appropriate Crown authority consents to the acquisition.

(3) A consent under paragraphs (1) or (2) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.

**Protective provisions**

31. Schedule 5 (protective provisions) shall have effect.

Signed by authority of the Secretary of State for Energy and Climate Change

[Name]

[Address]

Head of [Unit]

[Date] 201[X]

Department for Energy and Climate Change

# SCHEDULES

## SCHEDULE 1

Articles 2 and 5

### AUTHORISED DEVELOPMENT

In Northumberland the construction use and maintenance of a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act comprising:

*Work No.1* – an electricity generating station located on the eastern side of Battleship Wharf, Port of Blyth with a nominal gross electrical output capacity of up to 99.9 MWe fuelled by biomass and including:

- (a) boiler house;
- (b) main stack;
- (c) turbine hall;
- (d) workshop and maintenance building;
- (e) pump house and associated equipment for steam cycle systems;
- (f) two fuel storage sheds located to the north and the south of the turbine hall and boiler house;
- (g) day fuel storage shed located to the east of the turbine hall;
- (h) road vehicle discharge facility;
- (i) railway discharge and reception facility;
- (j) control room and administration buildings (with provision for visitor facility);
- (k) supplementary liquid fuel storage facility and associated distribution system;
- (l) bottom ash and fly ash handling and storage facility together with lorry transhipment and discharge facility;
- (m) processing plant including:
  - (i) flue gas treatment facility;
  - (ii) water treatment plant;
  - (iii) raw water storage facility;
  - (iv) demineralised water storage facility;
- (n) storage facilities for chemicals and sand for use in combustion and gas clean-up;
- (o) substation;
- (p) conveyor system attached to and connecting with buildings (a) (f) (g) and (h) and (i);
- (q) internal site roads, footways and vehicle parking facilities;
- (r) weighbridge;
- (s) security building and gatehouse;
- (t) external enclosed conveyor and mobile hopper system including transfer points leading from Berth 4 Battleship Wharf at ordnance survey national grid reference point NZ 30834 82861 to Work No.1(p);
- (u) water intake system from the estuary of the River Blyth under Berth 4 of the Commission's Battleship Wharf at ordnance survey national grid reference point NZ 30836 82822 consisting of a screened intake, underground pumping chamber, above ground access and pump house building and underground pipe running east from the estuary of the River Blyth and leading to a condenser within work No.1(c);
- (v) up to two water outfall pipes running underground from work No.1(c) at ordnance survey national grid reference point NZ 31068 82736 in an easterly direction and under the railway of the Port of Blyth, then the highway of North Blyth Road, the railway from North Blyth to Bedlington then under the foreshore

and the North Sea and the rock outcrop known as the Rockers to a diffuser on the sea bed referred to in paragraph (w) below.

- (w) a diffuser and foundation on the sea bed of the North Sea at ordnance survey national grid reference point NZ 32025 83375.

Associated development within the meaning of s115(2) of the Act comprising:

*Work No.2* – modifications to access to the highway of North Blyth Road at the existing entrance to the Commission’s Battleship Wharf at grid reference NZ 31146 82436 including modification to the roundabout in the highway of North Blyth Road at ordnance survey national grid reference point NZ 31192 82447 and work to repair the adjacent river wall in the estuary of the River Blyth and strengthen it by way of a new bored pile wall on the landward side of the existing river wall;

*Work No. 3A* – a grid connection consisting of a 66kV underground circuit and associated telemetry cables commencing at Work No.1 in an easterly direction for 35 metres under the Commission’s railway and bund to the western verge of North Blyth Road;

*Work No. 3B* – a grid connection consisting of a 66kV underground circuit and associated telemetry cables laid in a trench commencing at Work No.3A and then in a north westerly direction parallel to the carriageway of North Blyth Road for 520 metres to the Commission’s railway where it crosses North Blyth Road by a level crossing at ordnance survey national grid reference point NZ 30842 83263;

*Work No. 3C* – a grid connection consisting of a 66kV underground circuit and associated telemetry cables laid by directional drilling from Work No. 3B under the Commission’s railway where it crosses the highway of North Blyth Road by a level crossing for 85 metres at ordnance survey national grid reference point NZ 30793 83334;

*Work No. 3D* – a 66kV underground circuit and associated telemetry cables laid in a trench connecting with Work No. 3C and then in a north westerly direction parallel to the carriageway of North Blyth Road for 100 metres to Cambois roundabout at ordnance survey national grid reference point NZ 30717 83397 and connecting with Work No.4;

*Work No. 4* – a grid connection consisting of a 66kV underground circuit and associated telemetry cables laid in a trench connecting with Work No. 3D at ordnance survey national grid reference point NZ 30717 83397 under the unnamed highway classified as C415 and running west under the said highway for 406 metres to a point immediately north of the access from the former Blyth Generating Station site to the highway of North Blyth Road at ordnance survey national grid reference point NZ 30317 83371;

*Work No. 5* – a grid connection consisting of a 66kV underground circuit and associated telemetry cables laid in a trench connecting with Work No. 4 at ordnance survey national grid reference point NZ 30317 83371 underneath the highway of North Blyth Road and running south under the internal access road of the former Blyth Generating Station site from the highway of North Blyth Road to the substation owned by Northern Powergrid Limited on the former Blyth Generating Station Site at ordnance survey national grid reference point NZ 30297 83086;

*Work No. 6* – an emergency access and egress route from Work No. 1 connecting to the highway of North Blyth Road at ordnance survey national grid reference point NZ 31202 82556;

*Work No. 7* – removal of existing railway transit shed over the Commission’s railway to the west of the highway known as North Blyth Road and its resiting over the said railway at ordnance survey national grid reference point NZ 31026 82919;

*Work No. 8* – demolition of the Commission’s existing security cabin located to the north of the entrance to the Port of Blyth’s Battleship Wharf from the highway of North Blyth Road;

*Work No. 9* – construction of a new security cabin for the Commission to the north of the entrance to the Commission’s Battleship Wharf from the highway of North Blyth Road at ordnance survey national grid reference point NZ 31123 82483;

and in connection with such works further associated development comprising—

- (a) landscaping, fencing and boundary treatments;

- (b) metal mesh screening;
- (c) connection to the electricity network for the purpose of supply to the authorised development;
- (d) connection to the telecommunications network for the purpose of supply to the authorised development;
- (e) temporary construction site offices;
- (f) hardstandings on site for the parking of construction vehicles plant and machinery or for the vehicles of construction workers;
- (g) water supply works, foul drainage provision and surface water management systems;
- (h) raw water fire fighting tank and associated pipe network; and
- (i) installation and maintenance of an aid to navigation at ordnance survey national grid reference point NZ 32025 83375 marking the location of the water outfall pipe at its seaward end.

## SCHEDULE 2

Article 9

### STREETS SUBJECT TO STREET WORKS

(1)	(2)
Area	Street subject to Streetworks
Northumberland	C403 North Blyth Road from the roundabout south of Battleship Wharf at grid reference point NZ 31192 82447 to the Cambois roundabout at grid reference point NZ 30717 83397  The C415 unnamed highway from the Cambois roundabout at grid reference NZ 30717 83397 to the entrance to the former Blyth Generating Station site at grid reference NZ 30317 83371

## SCHEDULE 3

Article 27

### DEEMED LICENCE UNDER THE MARINE AND COASTAL ACCESS ACT 2009

#### PART 1

##### Licensed Marine Activities

###### Interpretation

1.—(1) In this Schedule—

“commence” means the first carrying out of any part of the licensed activities and commencement and commenced shall be defined accordingly;

“conditions” means conditions contained in this Schedule;

“the environmental statement” means the environmental statement submitted by the undertaker and certified as the environmental statement by the decision-maker for the purposes of the Order;

“the Hydrographic Office” means the Hydrographic Office of the Ministry of Defence, Taunton, Somerset TA1 2DN;

“licensed activities” means the activities below MHWS forming part of the authorised development and specified in Part 1 of this licence;

“MHWS” or “mean high water springs” means the average of high water heights occurring at the time of spring tides;

“MMO” means the Marine Management Organisation;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen's harbourmasters, government departments and harbour and pilotage authorities;

“the Order” means the North Blyth Biomass Power Station Order 201X;

“sea bed” means the ground under the sea;

(2) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated:

(i) all times shall be taken to be Greenwich Mean Time (“GMT”); and

(ii) all geographical co-ordinates contained within this Schedule shall be taken to be latitude and longitude degrees and minutes to three decimal places unless otherwise stated.

(4) Except where otherwise notified in writing by the MMO, the primary point of contact with the MMO and the address for email and postal returns and correspondence shall be:

Marine Management Organisation

Marine Licensing Team

Lancaster House

Hampshire Court

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032

Fax: 0191 376 2681

Email: [infrastructure@marinemanagement.org.uk](mailto:infrastructure@marinemanagement.org.uk).

(5) Any references to the local MMO Officer shall mean the relevant officer in the area(s) located at:



Marine Management Organisation  
Neville House  
Central Riverside  
Bell Street  
North Shields  
Tyne and Wear  
NE30 1JL  
Tel: 0191 257 4520  
Fax: 0191 257 1595  
Email: northshields@marinemanagement.org.uk.

- (6) To the extent that the licensed activities amount to the construction, improvement or alteration of works the conditions contained in Part 2 shall bind any other person who for the time being owns, occupies or enjoys the use of the licensed activities so constructed, altered or improved (whether or not this licence is transferred to that other person).

### **Details of licensed activities**

2.—(1) The undertaker is authorised (and any agent, contractor or subcontractor acting on their behalf) to carry out the licensable activities, comprising the construction of works in or over the sea and/or on or under the sea bed specified in paragraph (2) below together with the deposit of any substances and objects in or over the sea and/or on or under the sea bed in carrying out such construction of works.

(2) Such activities are authorised in relation to the construction and operation of an electricity generating station located on the eastern side of Battleship Wharf, Port of Blyth with a nominal gross electrical output capacity of 99.9 MWe fuelled by biomass, more fully described in Schedule 1 to the Order.

The construction of works in or over the sea and/or on or under the sea bed authorised are:

- (a) a cooling water intake system in the estuary of the River Blyth under Berth 4 of the Commission's Battleship Wharf at 55°08'19.689"N 001°31'04.197"W as part of Work No.1(u) described in Schedule 1 and consisting of a screened water intake, connecting to an underground pumping chamber and underground pipe running east from the estuary of the River Blyth together with associated temporary placement of netting in the intertidal area;
- (b) up to two cooling water outfall pipes running underground under the foreshore and sea bed at 55°08'16.855"N 001°30'51.124"W and under the rock outcrop known as the Rockers and including the construction of a diffuser and foundation on the sea bed at 55°08'37.307"N 001°29'56.825"W all as part of Works No. 1(v) and 1(w) described in Schedule 1 together with associated removal of silts and other sediments from the sea bed by diver using a mechanical vacuum to remove silt and sediment to a vessel, marine structure or floating container;
- (c) installation and maintenance of an aid to navigation at 55°08'37.307"N 001°29'56.825"W to indicate the location of the diffuser to vessels as part of the associated development described in Schedule 1; and
- (d) works to strengthen the river wall in the estuary of the River Blyth at 55°08'06.712"N 001°30'46.786"W by the installation of a new bored pile wall on the landward side of the existing river wall together with related works as part of Work No. 2 described in Schedule 1.

## PART 2

### Conditions applying to licensed activities

#### General conditions

Notification of commencement and completion

1.—(1) The undertaker shall notify the MMO:

- (a) of its acceptance of the conditions contained in this Part 2 not less than 5 working days prior to commencement of the licensed activities or any part of them;
- (b) of its intention to commence the licensed activities not less than 5 working days prior to commencement of the licensed activities or any part of them; and
- (c) of completion of the authorised development within 10 working days of such completion having occurred.

(2) Not less than 5 working days prior to commencement of the relevant licensed activities the undertaker shall notify the MMO of any agents, contractors or sub-contractors proposed to carry out the licensed activities on behalf of the undertaker and those persons notified to the MMO shall provide written confirmation to the MMO confirming their understanding of the terms and requirements of this Schedule and any subsequent amendments or revisions to it issued from time to time.

(3) Not less than 24 hours prior to commencement of the relevant licensed activities the undertaker shall notify the MMO of any vessel (including the vessel type, vessel IMO number and vessel owner or operating company) proposed to be used to carry out the licensed activities on behalf of the undertaker and the Masters of the vessels notified to the MMO shall provide written confirmation to the MMO that a copy of the Order is held upon the vessel and confirming their understanding of the terms and requirements of this Schedule and any subsequent amendments or revisions to it.

#### Project wide conditions

2.—(1) The licensed activities shall not commence until a marine pollution contingency plan, including details of how in the case of accidental spillage or other pollution event impacts on the marine environment will be minimised, has been submitted to and approved in writing by the MMO. Following approval, the undertaker shall implement the marine pollution contingency plan as approved. The undertaker shall report as soon as reasonably practicable any oil, fuel or chemical spill within the marine environment to the MMO, Marine Pollution Response Team: Marine Pollution Response Team, Lancaster House, Hampshire Court, Newcastle Upon Tyne, NE4 7YH. Tel: 0191 3762511. Fax: 0191 376 2682. Email: [dispersants@marinemanagement.org.uk](mailto:dispersants@marinemanagement.org.uk)

(2) The undertaker shall install bunding and/or storage facilities to contain and prevent the release of fuels, oils and chemicals associated with the plant, refuelling and construction equipment into the marine environment, and any secondary containment used shall have a capacity of not less than 110% of the containers storage capacity.

(3) The undertaker shall ensure that a local notice to mariners is issued at least two weeks prior to the commencement of the licensed activities advising local mariners and fishermen's organisations of the start date and any expected vessel routes to the offshore construction site and shall notify the MMO once issued.

(4) The undertaker shall notify the Source Data Receipt Team, UK Hydrographic Office, Taunton, Somerset, TA1 2DN (email: [hdcfiles@ukho.gov.uk](mailto:hdcfiles@ukho.gov.uk); tel:01823 337900) at least two weeks prior to the commencement of works and of the progress and completion of the authorised development for the promulgation of maritime safety information and for all necessary amendments to nautical charts and publications to be made.

(5) No chemicals shall be used in the construction of the licensed activities other than those included in the list of notified chemicals assessed for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 or as may otherwise previously have been certified in writing by the MMO as having been assessed to an equivalent level of toxicological hazard and risk assessment.

(6) All protective coatings/treatments used in the construction of the licensed activities shall be suitable for use in the marine environment and, where necessary, approved by the Health and Safety Executive or in accordance with the EA Pollution Prevention Control Guidelines. The use of such coatings/treatments shall accord with best environmental practice.

(7) Not less than two months prior to commencement of the relevant licensed activity the undertaker shall submit for approval by the MMO a construction method statement for the relevant activity and the scope of such method statement shall be agreed with the MMO prior to submission and shall fully reflect the construction methods assessed in the environmental statement. The relevant licensed activity shall not commence until the method statement for the relevant activity has been approved in writing by the MMO and following approval, the undertaker shall carry out the relevant licensed activity in accordance with the approved method statement. The method statement shall include provision that the construction of a diffuser and foundation on the sea bed comprising part of the licensed activities described in paragraph 2 (2) (b) above shall not be carried out during the period 1 April – 30 September in any calendar year.

(8) The undertaker shall ensure that any equipment, temporary structures, waste and/or debris associated with the construction of any licensed activities are removed within six weeks of completion of construction of the licensed activities.

(9) No waste concrete slurry or wash water from concrete or cement works shall be discharged into the marine environment and any concrete and cement mixing and washing areas shall be contained and sited at least 10 metres away from any watercourse or surface water drain.

(10) The licensed activities shall not commence until a marine construction and environmental management plan (“MCEMP”) relating to construction of the licensed activities referred to at Part 1, paragraph 2 above, and drafted in accordance with the principles set out in Chapter 4 of the environmental statement and the code of construction practice has been submitted to and approved in writing by the MMO. The MCEMP shall include a written ecological management plan reflecting the ecological mitigation and enhancement measures included in the environmental statement; details regarding construction noise and vibration management; safety measures and details regarding water management (surface water and ground water). The undertaker shall undertake all remediation, construction and commissioning works; and the operation and maintenance of the licensed activities in accordance with the approved MCEMP. During construction of the licensed activities the undertaker shall submit environmental monitoring reports to the MMO in accordance with the approved MCEMP.

(11) No part of the licensed activities shall commence until the undertaker has submitted to the MMO, and the MMO has approved, written details of any external lighting to be installed at any location of the licensed activities, including measures to prevent light spillage. The approved external lighting shall be installed and maintained for the duration of the licensed activities construction period.

### **Activity specific conditions**

3.—(1) No part of the licensed activities shall commence until (following consultation with the Environment Agency) full details of a scheme for minimising the impact of the water intake system within the River Blyth Estuary on the aquatic environment have been submitted to and approved in writing by the MMO. The submitted scheme shall include:

- (a) details of how the water intake system will be protected by a wedge-wire screen with a maximum of 3mm spacing or equivalent system;
- (b) details of how the water intake system will minimise the approach velocity of water to the wedge-wired screen or other equivalent system;
- (c) details of the concentration of biocides in the water intake system or other equivalent system and how they will be monitored and controlled;
- (d) proposals for implementing the scheme in advance of the commencement of commercial operations; and
- (e) proposals for monitoring and reporting on the effectiveness of the scheme and, in the event that the scheme does not perform as predicted, a process for any necessary remedial action being approved by the MMO and thereafter implemented within a stated timescale following such approval.

The undertaker shall implement the scheme as approved.

(2) Netting to prevent construction materials/demolition arisings falling into the intertidal mudflats shall be erected prior to and maintained during breaking through of the quay wall into the Blyth Estuary.

(3) The cooling water outfall pipe described as Work No. 1(v) in Schedule 1 shall only be operated in conjunction with the diffuser described as Work No. 1(w) in Schedule 1.

(4) During construction of the cooling water outfall diffuser and foundation spud legs shall be lowered only within the hour before or after the turn of low tide.

(5) The undertaker shall use only marine specification concrete and underwater concreting techniques in the construction of the cooling water outfall diffuser and foundation.

(6) The undertaker shall:

(a) mark and light the licensed activities (including any temporary construction works comprised in the licensed activities) as required by Trinity House, as the MMO directs;

(b) mark the diffuser with an aid to navigation comprising of a yellow pile with a yellow 'X' shaped topmark and a Fl (2) Y 10s light or as otherwise required by Trinity House, as the MMO directs;

(c) at all times maintain any aids to navigation to the reasonable satisfaction of Trinity House.

(7) No works for or associated with the construction of the cooling water intake system or with the strengthening of the river wall shall be carried out save in accordance with a silt mitigation scheme which has previously been approved in writing by the MMO. The said scheme shall provide for silt curtains or other effective mechanisms designed to protect the River Blyth Estuary from silt during construction of the said works and for a period of not less than seven days after each of the said works is completed.

# SCHEDULE 4

Article 3

## REQUIREMENTS

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## Interpretation

1.—(1) In this Schedule—

“applicable mandatory sustainability criteria” means:

- (i) the mandatory sustainability criteria which the undertaker must comply with from time to time as a condition of eligibility of the authorised development for financial assistance under a relevant assistance regime; or
- (ii) if financial assistance has been granted under a relevant assistance regime in respect of the authorised development for a limited period of time and that period has elapsed so that the authorised development is no longer eligible for financial assistance under any relevant assistance regime, those criteria by compliance with which the operation of the authorised development was most recently eligible for such assistance,

and biomass fuel feedstocks shall be taken to comply with the applicable mandatory sustainability criteria if, at that time, the undertaker has reason to believe that they comply with the applicable mandatory sustainability criteria;

“biomass fuel feedstocks” means

- (i) wood fuel, in the form of virgin wood fibre (chipped roundwood, slabwood, offcuts, peelings, butt reducing chips and bark), recycled wood chips, wood pellets and wood briquettes; or
- (ii) energy crops; or
- (iii) other biomass material, including residues from processing cereals (wheat, barley and maize) and oilseeds (rapeseed, sunflower and other oilseeds), that qualify as biomass as defined under the provisions of the Renewables Obligation Order 2009<sup>(a)</sup> (as amended from time to time by other subsequent legislation relevant to power generation).

“CEMP” means a construction and environmental management plan relating to the construction of the authorised development;

“code of construction practice” means a code of construction practice agreed by the relevant planning authority prior to commencement of the authorised development;

“commence” means the first carrying out of a material operation for the construction of the authorised development and commencement and commenced shall be defined accordingly;

“commissioning” means the testing of the authorised development prior to its first operation for commercial export of electricity and the phrase “first brought in to use” shall not apply to commissioning;

“construction site” means the area of onshore works of the authorised development;

“construction work” means operations to build the authorised development but does not include any internal fitting out or commissioning activities;

“first commercial use” means the first export of electricity from the authorised development for commercial purposes;

“heavy commercial vehicles” means any vehicles exceeding 3 tonnes in weight employed by the undertaker or its contractors or their subcontractors for the purpose of movement of aggregates plant and materials to and from the construction site during the construction period or employed for the purposes of delivering fuel stock during the operation of the authorised development as the case may be;

“mandatory sustainability criteria” means criteria relating to the sustainability of biomass for energy use (other than biofuels and bioliquids) which are prescribed in a relevant assistance regime;

“material operation” has the same meaning as section 155 of the 2008 Act;

“relevant assistance regime” means the provisions of any legislation or other legally binding arrangements established or approved by Government under or by virtue of which the generation of electricity from biomass fuel feedstocks on a commercial basis qualifies for financial assistance by reason of the burning of biomass fuel feedstocks which comply with prescribed mandatory sustainability criteria; and

“site” shall mean that part of the land within Order limits shown on 02377 D 2521-02 and titled “North Blyth Site Plan”

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<sup>(a)</sup> Renewables Obligation Order 2009 (2009 SI No.785)

(2) References to any statutory body shall include that body's successor bodies having jurisdiction over the authorised development.

### **Time limits**

2. The authorised development shall not be commenced after the expiration of five years of the date this Order comes into force.

### **Detailed design**

3.—(1) No part of the authorised development may commence until details of the following (which must accord with the principles of the design and access statement) have been submitted to and approved by the relevant planning authority—

- (a) details of the external appearance (including materials which are proposed to be used and proposed finishes) of Work Nos. 1(a) to (d), (f) to (j), (l), (m), (o), (p) and (s) comprised in the authorised development;
- (b) details of the architectural feature comprising translucent cladding shown on the elevations plan and forming part of Work No. 1(a) which must not emit light at a level greater than 60 lux when measured at any point within 20 metres of Work No. 1(a) at ground level between dusk and dawn in any 24 hour period;
- (c) details of vehicular access and circulation roads, drainage, parking, cycle parking, hardstanding, storage tanks and silos, loading and unloading facilities and turning facilities;
- (d) details for the minimisation of operational dust emitted by the authorised development prepared in accordance with the principles in paragraph 7.1.6 and 7.8.6 of the environmental statement;
- (e) details for the minimisation of operational noise emitted by the authorised development prepared in accordance with the principles in paragraphs 8.8.18 of the environmental statement; and
- (f) details of the metal mesh screens to be provided on the north east elevation of the authorised development more particularly shown on the elevations plan.

The development shall thereafter be carried out fully in accordance with the approved details.

(2) The details submitted to the relevant planning authority in accordance with paragraph (1) above shall demonstrate that:

(a) in respect of Work No. 1(a) excluding the architectural feature comprising translucent cladding shown on the elevations plan; Work Nos. 1(c) to (s); and Work No. 7 the heights of the buildings must not exceed the heights from existing ground level shown on the massing plan;

(b) in respect of Work No. 1(a), the architectural feature comprising translucent cladding shown on the elevations plan must be no greater than 4.5 metres in height when measured from the roof level of Work No.1(a) and no greater than 10 metres in width; and

(c) Work Nos. 1(a) to (d), (f) to (j), (l), (p) and (s) comprised in the authorised development must comply with the principles contained in numbers 1 to 8 of the elevational treatment list (including references to proposed colours) at paragraph 4.21 of the design and access statement.

(3) Work No. 1(b) must be finished in a light grey colour and must not be less than 100m in height measured from existing ground level, nor exceed 105 metres in height measured from existing ground level and its diameter must not exceed 5 metres.

(4) Save in relation to Work No. 1(l), for which micro-siting within a distance of 10 metres from its position shown on the elevations plan is permitted, Work Nos. 1(a) to (d), (f) to (j), (p) and (s) comprised in the authorised development must accord with the elevations plan.

### **Highway accesses**

4.—(1) No part of the authorised development may commence until written details of the siting, design and layout of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the relevant planning authority.

(2) The highway accesses must be constructed in accordance with the approved details prior to first commercial use of the authorised development.

### **Fencing and other means of enclosure**

5.—(1) No part of the authorised development may commence until written details of all proposed permanent fences, walls or other means of enclosure have, following consultation with Northumbria Police, been submitted to and approved by the relevant planning authority.

(2) The authorised development, and any construction sites, must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed within a period of twelve calendar months following the first commercial use of the authorised development.

(4) Any approved permanent fencing of the authorised development must be completed before first commercial use of the authorised development.

### **Surface and foul water drainage**

6.—(1) No part of the authorised development may commence until written details of the surface and foul water drainage systems (including means of pollution control and the principles set out in 14.7.12 of the environmental statement) have been submitted to and approved by the relevant planning authority and the sewerage and drainage authority.

(2) The surface and foul water drainage system must thereafter be constructed in accordance with the approved details and operational before first commercial use of the authorised development.

### **Surface water drainage – contamination**

7.—(1) Any surface water contaminated with hydrocarbons or silt must be treated to remove contamination in a manner previously approved in writing by the relevant planning authority in consultation with the Environment Agency prior to any discharge to any public sewer or water course.

(2) Appropriate interceptors (including oil interceptors) must be fitted to all appropriate drainage systems in accordance with a scheme to be submitted to and approved in writing by the relevant planning authority prior to commencement of the authorised development.

(3) The approved details must thereafter be maintained for the lifetime of the authorised development to the reasonable satisfaction of the relevant planning authority.

(4) A scheme for the prevention of contamination of controlled waters by cementitious materials must be prepared in accordance with paragraphs 15.6.23 – 15.6.26 of the environmental statement and submitted to and approved in writing by the relevant planning authority prior to commencement of the authorised development. The authorised development shall be carried out in accordance with the approved scheme. All concrete and cement mixing and washing areas must be bunded and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of runoff entering a watercourse.

(5) Prior to any concrete being sprayed or poured in an area that may give rise to concrete entering the marine environment, the undertaker must ensure that suitable protective sheeting is first provided in that area to prevent rebound or windblown concrete from entering the marine environment. Thereafter any rebounded or windblown material must be cleared away before the sheeting is removed.

### **Contaminated land and groundwater**

8.—(1) No part of the authorised development may commence until a written scheme (which may be included in the CEMP) has been prepared (including those measures proposed in paragraph 15.6.13 of the environmental statement) to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or ground waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme.



(4) If during the construction of the authorised development further contamination not previously identified is found to be present then no further work may be carried out on that part of the authorised development until a risk assessment has been carried out and the results of that risk assessment have been provided to the relevant planning authority.

### **Disposal of contaminated materials**

**9.**—(1) No part of the authorised development may commence until a scheme for the disposal of contaminated material (including contaminated water) arising from the construction of the authorised development has been submitted to and approved by the relevant planning authority (in consultation with the Environment Agency).

(2) Thereafter all contaminated material must be disposed of to licensed disposal facilities or treated where found in accordance with that scheme and to the reasonable satisfaction of the relevant planning authority. All reasonably required details of such disposal must be provided to the relevant planning authority on request.

### **Earthworks and remediation**

**10.**—(1) The CEMP must include details of the processes for dealing with remediation specified in paragraphs 4.5.53, 4.5.54 and 15.6.5 of the environmental statement. The CEMP must address, where necessary, detailed processes for dealing with the identified risks of harm or pollution from contaminant sources and will include procedures for the validation and auditing of the earthworks and any required remediation to ensure compliance with the CEMP.

(2) All earthworks must be carried out in accordance with the CEMP.

### **Ecological management**

**11.**—(1) The CEMP must include a written ecological management plan reflecting the ecological mitigation and enhancement measures included in the environmental statement and in particular the mitigation measures proposed for Grayling Butterflies, Common Lizards and Otters referred to at section 10.7 of the environmental statement.

(2) The written ecological management plan must include:

- (a) Proposals for the timing of any works which may impact on ecological receptors;
- (b) Appropriate working practices to be adopted to mitigate impacts on ecological receptors, including fencing to exclude workmen from potential nesting areas;
- (c) In relation to Common Lizards, a strategy for their protection and translocation if encountered which shall include identification of proposed receptor sites;
- (d) Proposals for the creation, management and monitoring of habitat; and
- (e) Proposals for record taking and reporting to the relevant planning authority.

(3) No on-site vegetation clearance or demolition works may occur within the period March to August of any year unless a suitably qualified ecologist has first undertaken a checking survey immediately prior to clearance or demolition and confirms that no active wild bird nests are present and a report of his findings has been provided to and agreed with the relevant planning authority. The authorised development must thereafter be carried out fully in accordance with the recommendations of the submitted report.

(4) The CEMP must include an implementation timetable for the ecological mitigation and enhancement measures and must be carried out as approved.

### **Code of construction practice and CEMP**

**12.**—(1) No part of the authorised development may commence until a code of construction practice has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may commence until a CEMP drafted in accordance with the principles set out in paragraphs 4.5.6 – 4.5.10 of the environmental statement and the code of construction practice has, after consultation with the relevant planning authority, been submitted to and approved by the relevant planning authority. The CEMP must deal in particular with:

- (a) lighting during construction;

- (b) construction noise and vibration management;
  - (c) air quality including dust management;
  - (d) sustainable waste management in a site waste management plan;
  - (e) traffic management and materials storage on site;
  - (f) water management (surface water and groundwater) including consideration of the principles in paragraphs 15.6.16 to 15.6.18 and 15.6.27 of the environmental statement;
  - (g) the identification of commissioning operations which may generate noise and how they will be notified to the relevant planning authority and to local residents;
  - (h) maintenance of relevant equipment in good working order and its being fitted with the appropriate silencers, mufflers or acoustic covers where applicable so as to reduce noise;
  - (i) the location of and screening of stationary noise sources (including demonstrating their location being as far away as reasonably possible from nearby residential properties) and where necessary the location of acoustic barriers to shield such noise sources;
  - (j) the movement of vehicles to and from the construction site so as to minimise noise;
  - (k) the supervision of employees to secure compliance with the noise control measures adopted;
  - (l) procedures and activities to prevent and control spillage of oil, chemicals and other potentially harmful liquids in accordance with paragraphs 11.6.2 and 15.6.19 of the environmental statement;
  - (m) storage of materials in accordance with paragraphs 14.7.13 to 14.7.17 and 15.6.17 of the environmental statement;
  - (n) Health and safety procedures in accordance with paragraphs 15.6.7 to 15.6.9 and 15.6.19 of the environmental statement; and
  - (o) the location, design and timing for erecting a board fence to reduce the potential for visual impacts during construction.
- (3) All remediation, construction and commissioning works shall be undertaken in accordance with the code of construction practice and CEMP.
- (4) The operation and maintenance of the authorised development must be undertaken in accordance with the CEMP or any variation or replacement thereof previously approved by the relevant planning authority.

### **Suppression of dust and dirt during construction**

**13—** (1) No part of the authorised development may commence until there has been submitted to, approved in writing by, and deposited with the relevant planning authority a scheme for the provision of wheel cleansing facilities for any heavy commercial vehicles or mobile plant which has an operating weight exceeding 3 tonnes and is associated with construction of the authorised development.

(2) Such facilities approved under paragraph (1) must be installed in accordance with a timescale to be approved in writing by the relevant planning authority and must be maintained throughout the period of construction of the authorised development.

(3) Any heavy commercial vehicle or mobile plant which has an operating weight exceeding 3 tonnes and is associated with the construction of the authorised development, other than those vehicles or mobile plant exclusively using tarmac and concrete roads, must whenever it leaves the construction site, pass through wheel cleansing facilities provided pursuant to paragraph (1) above prior to entering the highway.

(4) No part of the authorised development may commence until there has been submitted to, approved in writing by and deposited with the relevant planning authority a scheme employing reasonably practicable measures for the suppression of dust during the period of construction of the authorised development in accordance with paragraphs 7.8.4 and 7.8.5 of the environmental statement. The measures approved in the scheme for dust suppression must be employed throughout the period of the construction of the authorised development.

(5) Any open bodied heavy commercial vehicle carrying dry loose aggregate cement or soil into and out of the construction site must be sheeted.

### **Construction traffic routing and management plan**

**14.—**(1) No part of the authorised development may commence until written details of a construction phase traffic management plan (TMP) to be used for the management of construction traffic is, after

consultation with the relevant highway authority and the Highways Agency, submitted to and approved by the relevant planning authority.

(2) The TMP must include details of the routing strategy and procedures of the notification and conveyance of any abnormal indivisible loads (AIL). It must also include agreed routes, number of abnormal loads to be delivered by road and identification for AILs that will be delivered by road (or confirmation that no AILs will be required for construction of the authorised development). The details thereafter approved must be adhered to at all times when AILs are to be transported to or from the authorised development by road.

(3) The TMP shall also include details of the following:

- (a) identification of the construction programme and start and finish time of all personnel working on the construction site;
- (b) identification of the times when major items of plant and equipment are to be transported to and from the construction site by road;
- (c) any necessary measures for the temporary protection of carriageway surfaces; for the protection of statutory undertakers' plant and equipment and for the temporary removal of street furniture;
- (d) measures to mitigate the traffic impact of AILs;
- (e) description of the methods of transport to be used by construction personnel to minimise overall traffic impact;
- (f) description of monitoring procedures; and
- (g) proposals for communicating information to the relevant planning authority, the local highway authority and the Highways Agency.

(4) Notices must be erected and maintained throughout the period of construction at every construction site exit, in accordance with the TMP, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the construction site.

### **Control of noise during construction and commissioning**

**15.—**(1) No part of the authorised development may commence until a written scheme for noise management during construction in accordance with the provisions of paragraph 8.8.4 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme must set out the particulars of—

- (a) the works, and the methods by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits;
- (c) locations for noise measuring equipment for the monitoring requirements imposed by sub-paragraph (4) below and the times such monitoring will be undertaken;
- (d) a scheme for monitoring the noise from the construction of the authorised development during the times identified to monitor compliance with the noise limits referred to in sub-paragraph (b) above and the effectiveness of the associated noise attenuation measures;
- (e) how the undertaker will ensure that all works will be completed in accordance with the guidelines provided in BS 5228 parts 1 and 2 (2009) (Code of practice for noise and vibration control on construction and open sites); and
- (f) a scheme for mitigating the emission of noise during the commissioning phase of the authorised development including measures for mitigating the noise arising from steam purging during commissioning reflecting the provisions of paragraph 8.8.4 of the environmental statement.

(3) Any equipment requiring overnight operations such as pumps, generators and compressors will be adequately silenced to ensure that noise from such equipment will not exceed the night time limits in annex E of BS 5228 part 1 (2009) (45 LAeq).

(4) During the construction and commissioning of the authorised development during the months of August to March in any year the noise levels measured at Cambois coal staithes (national grid reference point NZ 30679 82815) and on Cambois Beach (national grid reference point NZ 31204 82857) will not

exceed 55 dB(A) LA Max unless previously agreed with the relevant planning authority following consultation with Natural England.

(5) The approved noise management scheme must be implemented before and maintained during construction of the authorised development.

#### **External lighting during construction**

**16.** No part of the authorised development may commence until written details of any external lighting to be installed at any of the construction sites, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority; and any approved means of lighting must subsequently be installed and maintained as approved for the duration of the construction period.

#### **Unexploded ordnance (UXO) survey**

**17.—**(1) No part of the authorised development may commence until a survey to ascertain UXO risk on the construction site is carried out and submitted to the relevant planning authority and the MMO together with (if required) any proposals of the undertaker to mitigate the risks and to adhere to the recommendations included in the UXO report.

(2) The authorised development must thereafter be carried out fully in accordance with such recommendations of the UXO report as are agreed by the undertaker and the relevant planning authority.

#### **Terrestrial ecology**

**18.** Not used.

#### **Travel plan – construction**

**19.—**(1) No part of the authorised development may commence until, after consultation with the highway authority and the Highways Agency, a travel plan for the construction workforce of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The plan approved under paragraph (1) shall include details of:

- (a) expected means of travel to and from the construction site and any parking to be provided on site;
- (b) numbers of construction staff, working hours and modal split;
- (c) work start and finish times for construction staff;
- (d) details of the number of car parking spaces to be provided on site and if appropriate a car park management plan;
- (e) commitment to measures that will encourage sustainable travel to and from the construction site for construction staff including the use of minibuses to carry workers to and from the construction site;
- (f) responsibility and timescales for implementing proposed measures;
- (g) targets for vehicle trips and modal splits;
- (h) formal monitoring regime for those targets;
- (i) provision for mess/canteen facilities for staff; and
- (j) consideration of offsite parking provision and a strategy for both car sharing and use of minibuses for the transportation of construction workers.

(2) The plan approved under paragraph (1) must be implemented and observed during the construction of the authorised development.

## **Flooding – mitigation**

**20.**—(1) No part of the authorised development may commence until there has been submitted to and approved in writing by (and deposited with) the relevant planning authority, in consultation with the Environment Agency, a scheme for mitigation of flood risk during the construction and operation of the authorised development prepared in accordance with the principles set out in section 14.7 of the environmental statement and the flood risk assessment annexed to the environmental statement. In particular it must include details of construction compounds and storage of materials to be located in areas of low flood risk and for access and egress from the construction or operational site of the authorised development to land above flood levels in the event of inundation.

(2) The approved scheme must thereafter be fully implemented and adhered to throughout the period of the construction and operation of the authorised development.

## **Fire prevention**

**21.**—(1) No part of the authorised development may commence until, following consultation with the Northumberland Fire and Rescue Service and the Blyth Harbour Commissioners, there has been submitted to and approved in writing by the relevant planning authority a fire prevention method statement, incorporating a fire risk assessment, which must accord with the details specified in paragraph 4.4.29 – 4.4.37 of the environmental statement and must also contain details of:

- (a) automatic fire detection and suppression measures and access of fire appliances to all major buildings, structures and storage areas, including measures proposed to contain and treat water used to suppress any fire;
- (b) physical separation of fuel stores, subdivision of fuel stores and proposals for segregation of fuel types within each fuel store;
- (c) additional fire prevention measures to be incorporated into the design of the authorised development to safeguard existing buildings or structures shown on the heat radiation contour plan as being situated within the heat radiation contour;
- (d) safe working practices to be employed in the management of fuel stores and the removal of wood dust discharged from ash handling and storage facilities;
- (e) requirements for operational staff to log all fire incidents including false alarms; and
- (f) the content, and timing for dissemination to local residents, of a summary of the safety procedures to be followed in the event of fire or similar emergency at the authorised development.

(2) The approved fire prevention method statement must be deposited with the relevant local planning authority, the Northumberland Fire and Rescue Service and the Blyth Harbour Commissioners.

(3) The authorised development must be carried out fully in accordance with the approved fire prevention method statement and all the relevant fire suppression and detection measures and fire appliances must be maintained in working order at all times when the authorised development is operational.

## **Aquatic ecology**

**22.** Not used.

## **Otter mitigation strategy**

**23.**—(1) No part of the authorised development may commence until full details of a scheme for minimising the risk of entrapment of otters has been submitted to and approved by the relevant planning authority. The scheme must include consideration of suitable boarding or covers to be used to prevent otters from accessing any deep and steep sided excavations near to the River Blyth, such as the water intake structure and cooling water intake pipe trenches. Where so required by the approved scheme, suitable means of escape will be provided, to enable otters to climb out of excavated areas and, where specified, excavations will be covered or means of escape provided at the end of each working day.

(2) The authorised development must be carried out fully in accordance with the approved details.

## **Asbestos**

**24.**— (1) No part of the authorised development may commence until a scheme is submitted to and approved in writing by the relevant planning authority for the mitigation of any risk of release of asbestos from the areas of asbestos encapsulation. All soils contaminated by asbestos and removed from the construction site will be removed under controlled conditions by a specialist contractor and disposed of off site at a suitably licensed landfill.

(2) No works within areas that may affect the area of asbestos encapsulation may commence until the relevant planning authority is satisfied that all risk assessments and detailed method statements have been agreed and approved by all relevant regulatory authorities.

## **Storage of liquids on site**

**25.**— (1) No part of the authorised development may commence until the relevant planning authority has received and approved in writing a method statement for the storage of process chemicals, fuels and lubricants on site and including their intended location and a pollution incident response plan. The details must be prepared in accordance with paragraphs 15.6.19 to 15.6.22 and 15.6.44 to 15.6.47 of the environmental statement.

(2) The authorised development must thereafter be carried out fully in accordance with the approved details, and the methods of storage of such process chemicals, fuels and lubricants must continue fully in accordance with the details approved by the relevant planning authority. Full records of the maintenance of the storage measures and the use of potentially contaminating substances must be made available to the relevant planning authority on request.

(3) No potentially contaminating liquid may be stored except in an area that has an impermeable bund of at least 110% of the storage capacity of the relevant container.

(4) The pollution incident response plan approved pursuant to paragraph (1) must be reviewed by the undertaker at the expiry of each five year period from the commencement of the authorised development and the results of such review must be submitted to the relevant planning authority for its approval.

## **Database of tall structures**

**26.** The authorised development must not be commenced until the undertaker has provided to the relevant planning authority confirmation that details of the anticipated height of the chimney stack and boiler house comprising part of Work No. 1 have been provided to the Defence Geographic Agency for inclusion in its database of tall structures.

## **Aviation safety**

**27.** That part of the authorised development comprising the main stack may not commence until there has been submitted to and approved in writing by the relevant planning authority following consultation with the Civil Aviation Authority a scheme for the provision of safety lighting on the stack forming part of the authorised development. The authorised development must be carried out in accordance with the approved scheme and the lighting required by such scheme must at all times be maintained to the reasonable satisfaction of the relevant planning authority.

## **European protected species**

**28.**—(1) If commencement of the authorised development occurs after two years from the date of the environmental statement then the authorised development must not be commenced until the potential for habitats within the application boundary to have changed sufficiently to make them suitable for European protected species has been assessed by the undertaker and the outcome of that assessment approved in writing by the relevant planning authority. If the relevant habitats are assessed to be suitable for European protected species, then further survey work must be carried out to establish whether European protected species are now present on any of the land affected, or likely to be affected, by the authorised development.

(2) Where a European protected species is shown to be present, no authorised development must be begun until, after consultation with the relevant planning authority, Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority; and the authorised development must be carried out in accordance with the approved scheme.

(3) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation (Natural Habitats, &c.) Regulations 2010<sup>(a)</sup>.

### **Construction hours**

29. Construction work must not take place other than between 0700 and 1800 hours on weekdays and 0700 and 1300 hours on Saturdays, excluding public holidays, unless alternative times are proposed to and previously agreed by the relevant planning authority.

### **Piling during construction period**

30. —(1) No piling works must be commenced until a piling method statement (which may form part of the CEMP) has been submitted to and approved by the relevant planning authority following consultation with Natural England, the Environment Agency and the MMO. The piling method statement must conform with the provisions set out in paragraphs 4.5.80 and 4.5.81 of the environmental statement, the letter from RES to Natural England dated 26 June 2012 and shall include details of mitigation to be employed to ensure that the noise from piling activities does not exceed 55dB(A)LA Max at the locations of the agreed measurement points during the months of August to March inclusive unless otherwise previously agreed with the relevant planning authority in consultation with Natural England, the Environment Agency and the MMO.

(2) The piling method statement will demonstrate that piling activities will not have a resultant unacceptable impact on groundwater.

(3) No piling works may commence as part of the construction of the authorised development until steps have been taken to ensure that vibration monitoring will be carried out (including for test piling) in accordance with details which have been submitted to and approved by the relevant planning authority. Thereafter details of monitoring must be submitted to and approved by the relevant planning authority in writing prior to commencement of any piling works for the authorised development and a record of vibration must be maintained at all times during the construction works and made available to the relevant planning authority on request.

(4) The authorised development must be carried out in accordance with the provisions of the approved piling method statement.

### **Onshore piling – mitigation of impact on ecology**

31. No piling works may be commenced onshore as part of the authorised development until a piling method statement for those works (which may form part of the piling method statement required in requirement 30) has been submitted to and approved by the relevant planning authority in consultation with Natural England regarding the mitigation of the impact of piling and other construction works that are significant in terms of noise generation likely to impact on ornithology. Such method statement must fully reflect paragraphs 11.6.5 - 11.6.19 of the environmental statement and include details of the following:

- (a) That noise levels will be monitored during the construction phase to ensure levels are as predicted;
- (b) That percussive piling may only be undertaken if the volume emissions of such works are to be increased on a gradual basis;
- (c) That no pile driving will take place between the hours of 17.30 and 07.00 on any day; and
- (d) A programme for reporting noise measurements and proposals for reporting on the effectiveness of the mitigation contained within the method statement including, in the event that predicted noise levels during the construction phase are exceeded, a process for any necessary remedial action being approved by the relevant planning authority and thereafter implemented within a stated timescale following such approval.

### **Piling – in vicinity of River Blyth Estuary**

32. No piling works may commence within 5 metres of the River Blyth Estuary as part of the authorised development until a piling method statement for those works (which may form part of the piling method statement required in requirement 30) has been submitted to and approved by the relevant planning

authority in consultation with the MMO regarding the mitigation of the impact of piling and other construction works that are significant in terms of noise generation likely to impact on aquatic and marine animals. Such method statement must fully reflect paragraphs 11.6.6 - 11.6.17 of the environmental statement and include details of the following:

- (a) That noise levels will be monitored during the construction phase to ensure levels are as predicted;
- (b) That percussive piling may only be undertaken if the volume emissions of such works are to be increased on a gradual basis;
- (c) That piling will be undertaken at times of the year when salmon and other migratory species of conservation concern are not moving through the Blyth Estuary in large numbers;
- (d) That no pile driving will take place between the hours of 17.30 and 07.00 on any day; and
- (e) A programme for reporting noise measurements and proposals for reporting on the effectiveness of the mitigation contained within the method statement including, in the event that predicted noise levels during the construction phase are exceeded, a process for any necessary remedial action being approved by the relevant planning authority and thereafter implemented within a stated timescale following such approval.

### **Control of artificial light emissions**

**33.**—(1) The authorised development may not be brought into first commercial use until a written scheme for the management and mitigation of artificial light emissions (which must be in accordance with the principles of paragraph 9.10.53 and Appendix 4.6 of the environmental statement) has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented and maintained during the construction and operation of the authorised development.

(3) No internal lighting of Work No. 1(a) shall be by way of uplighting.

### **Control of dust emissions**

**34.**—(1) The authorised development may not be brought in to first commercial use until a written scheme for the management and mitigation of dust emissions including:

- (a) the use of hoppers with integrated dust suppression for unloading fuel stock from vessels;
- (b) the storage, management and handling of fuel and fly ash;
- (c) the unloading of fuel from rail vehicles or heavy commercial vehicles; and
- (d) the details, including locations, of dust level monitors

has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented and maintained during the operation and decommissioning of the authorised development.

### **Waste management on site**

**35.**—(1) The authorised development may not be brought in to first commercial use until the relevant planning authority has received and approved in writing a site waste management plan for the operational phases of the authorised development incorporating the principles in paragraphs 4.4.23 to 4.4.26 of the environmental statement. The site waste management plan must address and include at least the following:

- (a) The storage of waste materials on site;
- (b) Removal of waste materials from the site for recovery/disposal at appropriately licensed sites;
- (c) The return/disposal of general engineering wastes (such as spent filters and used parts).

(2) The authorised development must thereafter be operated fully in accordance with the approved details.

### **Control of combustion and steam emissions**

**36.** Not used



## **Travel Plan and Traffic Management Plan – operational period**

**37.**—(1) No part of the authorised development may be brought into first commercial use until, after consultation with the local highway authority and Highways Agency, a framework travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

(2) The details referred to in sub-paragraph (1) above must include:

- (a) number of operational staff, working hours and modal split for journeys to work;
- (b) work start and finish times for operational staff;
- (c) details of the number of car parking spaces to be provided onsite and if appropriate the provision of a car parking management plan;
- (d) commitment to measures that will encourage sustainable travel to and from the site for operational staff;
- (e) responsibility and timescales for implementing proposed measures;
- (f) targets for vehicle trips and modal splits; and
- (g) a formal monitoring regime for those targets, including: a requirement for an annual review of the performance of the travel plan; submission (and timetable for submission) of the review findings to the relevant planning authority; a process to agree with the relevant planning authority any necessary revisions to the travel plan or its targets following the annual review; and a timetable for any implementation of any agreed revisions.

(3) The framework travel plan must also include details of:

- (a) cycle parking provision on site;
- (b) the provision of and location of an electric car charging point; and
- (c) an agreed number of car share parking spaces.

All measures proposed must be provided from first commercial use of the authorised development and thereafter maintained during the operation of the authorised development, subject to any alterations or variations thereto previously agreed in writing by the relevant planning authority, until replaced by the full travel plan.

(4) The undertaker must submit to the relevant planning authority for approval in consultation with the local highway authority a full travel plan based on the framework travel plan within three months of the authorised development being brought into first commercial use. Following its approval, the full travel plan must continue to be observed for as long as the authorised development is operational subject to any alterations or variations thereto previously agreed in writing by the relevant planning authority.

(5) No part of the authorised development shall be brought into first commercial use until the relevant planning authority, following consultation with the local highway authority and the Highways Agency has approved a traffic management plan (which may form part of the framework travel plan) for both staff and delivery traffic movements for the operation of the authorised development. The traffic management plan must contain details of the route to be followed by heavy commercial vehicles employed for the purposes of delivering fuel stock and, in the event that the agreed route on the local road network in the vicinity of the site is not available, details of an alternative temporary route together with the conditions under which such temporary route must be used, including maximum speeds of heavy commercial vehicles and any restrictions on use during certain times of the day. Following its approval, the traffic management plan must continue to be observed for as long as the authorised development is operational subject to any alterations or variations thereto previously agreed in writing by the relevant planning authority in consultation with the local highway authority and the Highways Agency.

## **Combined Heat and Power**

**38.**—(1) The authorised development may not be brought into first commercial use until the relevant planning authority, in consultation with the Environment Agency, has certified that it is satisfied that the undertaker has included in Work No. 1 appropriate connections for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems.

(2) The undertaker shall thereafter maintain such provision for the lifetime of the development.

(3) The undertaker must on the date that is 12 months after the authorised development is first brought into commercial use submit to the relevant planning authority for its approval, in consultation with the Environment Agency, a report it has compiled (CHP Review) in consultation with the relevant planning authority and the Environment Agency, updating the CHP/ District heating feasibility report submitted with the application. The CHP Review must consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of the submission of the CHP Review and must include a list of actions (if any) the undertaker shall reasonably undertake (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development. The undertaker must thereafter undertake such actions as are agreed within the timescales specified in the CHP Review.

(4) The CHP Review must be revised and re-submitted by the Undertaker to the relevant planning authority, in consultation with the Environment Agency, in accordance with the process and subject to the requirements stated in paragraph (3) on the date that is five years after the date of its previous submission to the relevant planning authority throughout the lifetime of the authorised development and any actions specified in the subsequent CHP Review must be carried out by the undertaker in accordance with the timescales specified in the re-submitted CHP Review.

### **Flooding – warning and evacuation plan**

**39.**—(1) The authorised development may not be brought in to first commercial use until a flood warning and evacuation plan (FEP) has been submitted to and approved in writing and deposited with the relevant planning authority following consultation with the Environment Agency. The FEP shall address and include at least the following:

- (a) Command and control procedures (to include a procedure for dealing with flooding incidents);
- (b) Training and exercising of personnel on site (including records of such activities) must be maintained;
- (c) Flood warning procedures (in terms of receipt and transmission of information and to whom notification must be provided for the implementation of the FEP); and
- (d) Site evacuation procedures and routes; provision of the identified safe refuges and their continuing maintenance.

(2) Full details of the emergency flood access route from the authorised development to North Blyth Road shall be included in the FEP. The FEP must be reviewed at intervals not exceeding three years from first approval. The FEP must thereafter form part of the health and safety at work procedures applicable to the authorised development and must be adhered to throughout the operational phase of the authorised development.

### **Site safety and signage**

**40.**—(1) The authorised development may not be brought into first commercial use until the relevant planning authority has first approved in writing a scheme for on site safety, including safe pedestrian and vehicular movements and appropriate signage, in accordance with the principles in paragraphs 4.3.127 and 4.3.129 of the environmental statement.

(2) The approved plan must be adhered to by the undertaker subject to any variation of the plan previously agreed in writing by the relevant planning authority.

### **Control of noise during operational phase**

**41.**—(1) Specific noise generated following commissioning of the authorised development must not exceed the following levels when measured generally in accordance with BS 4142 1997 at 3.5m from the facades of any noise sensitive receptor—

- (a) between 23.00 hours and 07.00 hours: the greater of a level of 5dB above background or 40 dB LAeq, 5 min; and
- (b) between 07.00 hours and 23.00 hours: the greater of a level of 5dB above background or 40 dB LAeq, 1 hour.

(2) Paragraph (1) does not apply to any emergency event, or to any steam purging, commissioning or testing event previously notified to the relevant planning authority and Natural England; and any testing of

steam valves, or other activities during maintenance causing intermittent noise levels above 55dB(A) LA Max measured at Cambois coal staithes (national grid reference point NZ 30679 82815) and on Cambois Beach (national grid reference point NZ 31204 82857) shall be restricted to the months of April – July in any calendar year unless otherwise agreed with the relevant planning authority and Natural England.

(3) The authorised development must not be brought into first commercial use until a plan for controlling intermittent noise levels has been submitted to and approved by the relevant planning authority. The submitted plan must deal with –

- (a) design measures including enclosures, atmospheric vent silencers and acoustic lagging of external steam pipes and valves;
- (b) processes for controlling the noise emitted during steam valve testing;
- (c) the identification of other testing processes likely to give rise to high intermittent noise levels and procedures for the control of emitted noise; and
- (d) methods for informing the relevant planning authority in advance of testing events likely to give rise to high intermittent noise levels and for publicising for local residents the intended testing.

The authorised development must thereafter be operated in accordance with the approved plan.

(4) In this requirement –

“background” means the noise levels recorded in the background noise survey results contained in appendix 8.1 of the environmental statement;

“noise sensitive receptor” means those locations specified in the environmental statement chapter 8 or otherwise previously agreed with the relevant planning authority; and

“relevant activities” means any activities carried out in an area in respect of which the local authority has not exercised its powers under Part III of the Control of Pollution Act 1974.

### **External storage**

**42.**—(1) Unless in the situation of an emergency no biomass fuel feed stocks or post combustion residue may be stored outside of any buildings forming part of Work No. 1 (save during transshipment), but instead must be stored under cover at all times during the operation of the authorised development.

(2) In any situation where such storage cannot be adhered to because of an emergency the undertaker must provide the relevant planning authority with a written statement as soon as reasonably practicable after such emergency storage detailing the nature of the emergency and why this requirement could not be observed.

### **Deliveries of fuel stock by road**

**43.**—(1) A written record of the numbers of movements of heavy commercial vehicles must be maintained on site by the undertaker from first commercial use and copies of the records maintained in the preceding three month period must be submitted to the relevant planning authority every three months following first commercial operation or within five working days of the relevant planning authority’s written request.

(2) If more than 276 movements of heavy commercial vehicles employed for the purposes of delivering fuel stock (including the departures of empty vehicles) to or from the authorised development occur, or are anticipated to occur, in any day (from 0:00 to 23:59) calculated by reference to mean average movements over a period of five continuous working days, then the undertaker must submit for approval to the relevant planning authority (in consultation with the local highway authority and the Highways Agency) a traffic mitigation plan within 28 days of either first occurrence or the date from which the occurrence is first anticipated.

(3) Once approved the traffic mitigation plan must be observed until the relevant planning authority (in consultation with the local highway authority and the Highways Agency) has confirmed in writing that the traffic mitigation plan need no longer apply; and the duration of the period during which the level of movements of heavy commercial vehicles referred to in paragraph (2) to which the traffic mitigation plan applies must not exceed a period of three months unless otherwise previously agreed by the relevant planning authority (in consultation with the local highway authority and the Highways Agency).

## **Biomass fuel sustainability**

**44.**—(1) Excepting fuels used for the purpose of boiler start up or combustion stabilisation, only biomass fuel feedstocks which comply with the applicable mandatory sustainability criteria may be burnt in the main boiler(s) of the authorised development.

(2) The undertaker must submit to the relevant planning authority a report on the sustainability of all biomass fuel feedstocks burnt in the main boiler(s) within twelve calendar months of first commercial use (Fuel Sustainability Report). The Fuel Sustainability Report will provide the same information and level of assurance and verification which the undertaker is required (or would be required, if claiming financial assistance in respect of the electricity generated for such biomass fuel feed stocks) to provide in respect of the sustainability of biomass fuel feedstocks under the applicable mandatory sustainability criteria and will report if the authorised development has been claiming financial support on a month by month basis. Thereafter a further Fuel Sustainability Report must be submitted to the relevant planning authority at the end of each 12 month period from the date of the submission of the first submitted Fuel Sustainability Report throughout the operational life of the authorised development.

## **Decommissioning**

**45.**—(1) There must be submitted to the relevant planning authority within 12 months of the authorised development ceasing to be used for the purposes of electricity generation a site closure and restoration plan for the demolition and removal of the authorised development from the site for approval by the relevant planning authority, in consultation with the Environment Agency. The scheme must include the principles in paragraphs 4.6.9 to 4.6.13 of the environmental statement and also include:

- (a) details of all structures and buildings which are to be demolished;
- (b) consideration of the effects of leaving below-ground structures permanently in-situ in a dynamic coastal and marine environment together with details of consultations undertaken to consider the need to remove any or all of those structures.
- (c) details of the means of removal of the materials resulting from the demolition and measures for the control of dust and noise;
- (d) phasing of the demolition and removal works;
- (e) details of the restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) details of the restoration works and their phasing;
- (g) details of the temporary lighting scheme (if any) proposed to be used during decommissioning works;
- (h) details of any remediation works required to remove contaminants from the Order land together with details of how such contaminants will be safely disposed of; and
- (i) details of how those mitigation measures implemented for the protection of ornithology and ecology during construction would also be implemented during the decommissioning phase.

(2) The demolition and removal of the authorised development (which must include all building structures, plant, equipment, areas of hard standing and access roads) and subsequent restoration of the site must thereafter be carried out fully in accordance with the approved scheme.

## **Workforce development strategy**

**46.**—(1) No part of the authorised development may commence until a workforce development strategy has been submitted to and approved by the relevant planning authority.

(2) The strategy approved under paragraph (1) must include details of:

- (a) proposals for local advertising of employment opportunities in the construction of the authorised development;
- (b) proposals for the undertaker to provide outreach employment presentations during the period of construction of the authorised development at appropriate frequencies and locations within the Blyth Estuary area;

- (c) proposals for provision of monthly employee training sessions during the construction period on correct, efficient and safe working practices and for the provision of employee training sessions at reasonable frequencies throughout the operation of the authorised development;
- (d) proposals for local advertising of employment opportunities throughout the operation of the authorised development, which must also include a proposal for local advertising of employment opportunities at least six (6) months prior to the commissioning of the project;
- (e) proposals for offering a minimum of two apprenticeships, each for a period of up to three years, to personnel residing in the Blyth Estuary area and already employed, directly or indirectly, in the construction of the authorised development;
- (f) proposals for offering a minimum of three national vocational qualifications, or equivalent each for a period of up to three years, to personnel residing in the Blyth Estuary area and already employed, directly or indirectly, in the construction of the authorised development; and
- (g) proposals for the undertaker to provide information on the operation of the strategy, once implemented, to any community liaison group created by the undertaker for the purposes of keeping the local community informed of matters relating to the operation of the authorised development.

(3) The approved workforce development strategy must be implemented and maintained during the construction and operation of the authorised development.

#### **Requirement for written approval**

47. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

#### **Amendments to approved details**

48. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

## SCHEDULE 5

Article 31

### PROTECTIVE PROVISIONS

#### FOR PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993(a);

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3. (1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

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<sup>(a)</sup> 1993 c.43.

<sup>(b)</sup> 2006 c.46.

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4. (1) The undertaker shall not exercise the powers conferred by article 12 (Authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictions on the use of, any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5. (1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 29.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6. (1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—
  - (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
  - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
  - (c) in such manner as to cause as little damage as is possible to railway property; and
  - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.
- (2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.
- (3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.
7. The undertaker shall-
  - (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
  - (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.
8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.
9. (1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 5(4) are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.
- (2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.
- (3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.



(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. (1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

(a) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail shall make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

- (5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to this paragraph.
- (6) If at any time prior to the commencement of operation of any part of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the promoter's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.
- (7) In the event of EMI having occurred –
- (a) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –
- (a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 29 (Arbitration) to the Law Society of England and Wales shall be read as a reference to the Institution of Engineering and Technology.
12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
13. The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the

existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15. (1) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
  - (b) any lands, works or other property held in connection with any such railway property; and
  - (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.
19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.
20. The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (Consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—
- (a) the nature of the application to be made;
  - (b) the extent of the geographical area to which the application relates; and
  - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 28 (Certification of plans) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises the construction and operation of a biomass fuelled electricity generating station and associated works to be situated at the Blyth Harbour Commission's Battleship Wharf, North Blyth, in the County of Northumberland. It also provides for the connection of those works via a cable connection laid underground to the electricity distribution system. For the purposes of the development that it authorises, North Blyth Energy Limited is authorised by the Order to acquire land and rights in land compulsorily or by agreement as well as to override easements and other rights. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants a deemed marine licence for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of associated development comprising a cooling water intake in the estuary of the River Blyth and a cooling water outfall pipe and diffuser from the generating station in the North Sea. The deemed marine licence imposes conditions in connection with the deposits and works for which it grants consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 28 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Northumberland County Council at County Hall, Morpeth, Northumberland NE61 2EF.