



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

North Killingholme Power Project

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Examining Authority

Lead Member

Member

Member

Kelvin MacDonald

Martin Broderick

Alan Novitzky

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ExA's findings and conclusions and recommendation in respect of an application for a Development Consent Order for a new thermal generating station that would operate either as a Combined Cycle Gas Turbine (CCGT) plant or as an Integrated Gasification Combined Cycle (IGCC) plant, with a total electrical output of up to 470MWe at North Killingholme, Lincolnshire.

File Ref EN010038

- The application, dated 25 March 2013, was made under Section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 25 March 2013.
- The applicant is C.GEN Killingholme Limited.
- The application was accepted for examination on 19 April 2013.
- The examination of the application began on 12 September 2013 and was completed on 11 March 2014.
- The development proposed comprises a new thermal generating station that would operate either as a Combined Cycle Gas Turbine (CCGT) plant or as an Integrated Gasification Combined Cycle (IGCC) plant, with a total electrical output of up to 470MWe at North Killingholme, North Lincolnshire, together with associated development.

Summary of Recommendation:

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

The Examining Authority recommends that the Secretary of State should withhold consent for the request for powers for compulsory acquisition in respect of certain statutory undertakers and plots.



ERRATA SHEET – North Killingholme Power Project - Ref. EN010038

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 11 June 2014

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

Page No.	Paragraph	Error	Correction
106	6.13	Third bullet, second line: 'C2/41'	'CA2/41'
133	6.169	'With unknown category 2 ownership on fourteen plots...'	'With unknown category 2 ownership on sixteen plots...'
137	6.199	'...the ExA is recommending that powers of CA are granted only in respect of Network Rail Infrastructure.'	'...the ExA is recommending that powers of CA are granted only in respect of Network Rail Infrastructure and of unknown category 2 owners.'
141	6.231	'With unknown category 2 ownership on seven plots...'	'With unknown category 2 ownership on eight plots ...'
142	6.241	'With unknown category 2 ownership on three plots ...'	'With unknown category 2 ownership on four plots...'
143	6.251	Plot 07/02 is missing	Add plot 07/02 to paragraph
143	6.253	Text in italics	Read as standard format text
151	6.295	Plot 07/02 is missing	Add plot 07/02 to paragraph
2 of the recommended DCO	Schedule 8, Part 6	'PART 6 — For the Protection of Able Humber Ports Limited Error! Bookmark not defined'.	Remove 'Error! Bookmark not defined'
2 of the recommended DCO	Schedule 8, Part 7	'PART 7 — Interfaces with Hornsea Project Companies Error! Bookmark not defined'.	Remove 'Error! Bookmark not defined'
20 of the recommended DCO	Article 34	'(b) the land plans (Document Reference Nos 2.1 to 2.14, dated 20 March 2014);'	'(b) the land plans (Document Reference Nos 2.1 to 2.14, dated 20 March 2013);'

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1 INTRODUCTION

- 1.1 C.GEN Killingholme Ltd (the applicant) propose to develop a new thermal generating power station that would operate either as a Combined Cycle Gas Turbine (CCGT) plant or as an Integrated Gasification Combined Cycle (IGCC) plant, with a total electrical output of up to 470MWe, together with associated development at North Killingholme, North Lincolnshire.

EXAMINATION PROCESS

- 1.2 The application, dated 25 March 2013, was made under Section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 25 March 2013.
- 1.3 The application was accepted for examination on 19 April 2013 [DEC-001].
- 1.4 On the 28 June 2013 a single Examining Inspector was appointed to conduct the examination of this application:
- Kelvin MacDonald
- 1.5 After receipt of the relevant representations a review of the project was made and on 6 August 2013 [DEC-004] an Examining Authority (ExA) was appointed to conduct the examination under s62 and s65 of the Planning Act 2008 (as amended):
- Kelvin MacDonald Lead member of the ExA;
 - Martin Broderick Member of the ExA;
 - Alan Novitzky Member of the ExA.
- 1.6 The examination of the application began on 12 September 2013 and was completed on 11 March 2014 [DEC-020].
- 1.7 A Preliminary Meeting (PM) was held on 11 September 2013 to which all interested parties were invited (letter of 6 August 2013 [DEC-004]). The letter included a draft timetable for the examination and the ExA's initial assessment of the principal issues arising on the application.
- 1.8 The ExA issued its first round of written questions on 20 September 2013 [DEC-005].
- 1.9 An accompanied site visit, with the Applicant and an Interested Party [DEC-007], was undertaken on the 19 November 2013 encompassing [HR-004]:
- The proposed site of the Power Station, which is made up of the Power Island, the Gasification Plant and the Common Facilities;
 - The proposed sites of the Fuel Handling Areas;
 - The proposed Cooling Water Connection route;

- The proposed Electrical Grid Connection route;
- The proposed Gas Connection route;
- The viewpoints featured in the submitted photomontages;
- Sites of heritage interest including the Grade I listed Thornton Abbey, the Grade II listed Brick and Tile Kiln, the scheduled moated sites, and the trial archaeological excavation trenches;
- Footpaths, including Nev Cole Way along the river frontage and those associated with the ecological mitigation land;
- A number of road junctions; and
- Viewing of North Killingholme Haven Pits Site of Special Scientific Interest (SSSI) from Haven Road and the coastal footpath.

1.10 During the course of the examination thirteen hearings were held. These were:

- An open-floor hearing on 20 November 2013 in North Killingholme;
- Issue specific hearings into the:
 - DCO - 20 November 2013 and 04 February 2014;
 - Compulsory acquisition matters - 21 to 22 November 2013 and 11 to 13 February 2014;
 - Traffic and transport - 26 November 2013 and 06 February 2014;
 - Habitats Regulations - 27 November 2013 and 05 February 2014
 - EIA and other matters issues - 28 November 2013;
 - Design issues - 29 November 2013;
 - Historic & Archaeological - 29 November 2013 and
 - S127 - 12 February 2014.

1.11 A second round of questions was issued on 13 December 2013 [DEC-010].

1.12 A limited third round of questions was issued on 25 February 2014 [DEC-015].

1.13 Additionally, the ExA made a number of procedural decisions under the Planning Act 2008, as amended, and the Infrastructure Planning (Examination Procedure) Rules 2010, as amended. These included procedural decisions, dated 4 October 2013 [DEC-006] and 3 March 2014 [DEC-013], made to accept into the examination the applicant's proposed changes to the Order Limits.

1.14 All procedural decisions arrived at during the course of the examination are detailed in Appendix C [DEC-001 to DEC-020].

1.15 The contents of the Examination Library are detailed in Appendix A.

- 1.16 Other consents necessary for the construction and operation of the proposed Project are detailed in Appendix B.
- 1.17 This document sets out in accordance with Section 74(2)(b)(i) of PA 2008 the ExA findings and conclusions in respect of the application and its recommendation to the Secretary of State for Energy and Climate Change under Section 74(2)(b)(ii) of Planning Act 2008 (PLANNING ACT 2008).

STRUCTURE OF THE REPORT

- 1.18 The Report is structured as follows:
- Section 2 sets out the main features of the proposed Project;
 - Section 3 summarises the legal and policy context applicable to consideration of the application;
 - Section 4 sets out the ExA findings and conclusions in respect of each of the policy and factual issues and the other potentially important and relevant matters, identified by the ExA;
 - Section 5 assesses the application against the Habitats Regulations;
 - Section 6 assesses the requests for compulsory acquisition;
 - Section 7 assesses the draft DCO and the s106 Agreement; and
 - Section 8 sets out the ExA overall conclusions and recommendations to the Secretary of State.
- 1.19 The following appendices are included:
- Appendix A lists the documents submitted by the Applicant and others in connection with the Application, with the references used in this report;
 - Appendix B lists other consents required;
 - Appendix C details the main events occurring during the Examination and the main procedural decisions taken by the ExA;
 - Appendix D is a list of Abbreviations used in this report;
 - Appendix E shows the DCO that the ExA recommend the Secretary of State should make, together with a version marked up to show the changes made to the applicant's application draft;
 - Appendix F comprises the Report on s.127 and s.138 land.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

THE APPLICATION

- 2.1 C.GEN Killingholme Ltd (the applicant) proposes to develop a new thermal generating power station that would operate either as a Combined Cycle Gas Turbine (CCGT) plant or as an Integrated Gasification Combined Cycle (IGCC) plant, with a total electrical output of up to 470MWe, together with associated development at North Killingholme, North Lincolnshire.
- 2.2 The Application site (centred upon the Operations Area) lies approximately 5 kilometres (km) north west of Immingham Docks, on land adjacent to C.RO Ports Killingholme (CPK).
- 2.3 The nearest residential settlements to the Application site, are:
- East Halton (approximately 1.2 km to the west);
 - North Killingholme (approximately 2 km to the south west); and
 - South Killingholme (approximately 3 km to the south west)
- 2.4 The Application Site is located wholly within the administrative boundary of North Lincolnshire Council (NLC).
- 2.5 The Application site, covers approximately 286 ha, [APP-009] of which a large proportion of the site's land area currently comprises a variety of hardstanding (e.g. old building and tank foundations), small buildings, local gas pipelines, two large ponds and areas of rough grassland/ scrub. It is a former naphtha/ gas processing site.
- 2.6 Other key location maps and plans are referenced in Appendix A – Examination Library references.
- 2.7 The Project would comprise the following principal elements:
- The Power Station, which is made up of the Power Island, the Gasification Plant and the Common Facilities;
 - The Fuel Handling Areas;
 - The Cooling Water Connection;
 - The Electrical Grid Connection¹; and
 - The Gas Connection².

1 The applicant is not seeking development consent for the works required for the Grid Connection within this application. The applicant has stated that the works will be the subject of a separate application under legislation other than the Planning Act 2008. The applicant is seeking powers of compulsory acquisition of land and/or rights over land and powers in relation to public rights of way over the route corridor which comprises the Grid Connection Land, within this application (see Section 6).

2 The applicant is not seeking development consent for the works required for the Gas Connection within this application. The applicant has stated that the works will be the subject of a separate application under legislation other than the Planning Act 2008. The applicant is seeking powers of compulsory acquisition of land and/or rights over land and powers in relation to public rights of way

- 2.8 A plan showing the location of the Application site and the main elements of the project is included at Figure 1.2 of the Planning Statement [APP-064] that accompanied the application.
- 2.9 The Principal Project Area (PPA) [APP-009] includes:
- the Operations Area – this is the land proposed for the Generating Station itself (the NSIP). The Generating Station is made up of two principal elements:
 - the Power Island and the Gasification Plant. The Power Island comprises all the elements required for the Generating Station to operate as a CCGT plant;
 - the Gasification Plant comprises the equipment required if the Generating Station is to operate as an IGCC plant.
- 2.10 In addition, the Generating Station will include Common Facilities for operation both as a CCGT or an IGCC plant, such as:
- cooling towers,
 - offices and workshops,
 - raw water treatment,
 - waste water treatment and
 - gas insulated switchgear.
- 2.11 The Operations Area is shown coloured blue on Figure 2.2 [APP-050].
- 2.12 Fuel Handling Areas – these comprise the locations for the facilities needed to supply and store fuel for the Generating Station via rail or sea and conveyors. These indicative areas are shown coloured purple and orange, respectively, on Figure 2.3 [APP-050] (the proposed location of the on-site fuel storage arrangements is shown to the north of the Operations Area);
- 2.13 Cooling Water Connection – this will comprise an intake and outfall from the River Humber, around the existing CPK jetties. The extent of land within which the Cooling Water Connection will be installed is shown in green on Figure 2.4 together with the anticipated locations of the intake and outfall systems [APP-050]; and
- 2.14 Construction Laydown Areas – indicative locations for construction laydown are shown as the areas coloured pink on Figure 2.5 [APP-050].
- 2.15 The project is a Nationally Significant Infrastructure Project (NSIP) comprising a generating station as defined in Sections 14(1)(a) and 15 of the Planning Act 2008. The various works that this

over the route corridor which comprises the Gas Connection Land within this application (see Section 6).

application is seeking authorisation for are detailed in Schedule 1, Part 1 of the draft DCO [APP-114]

2.16 Ancillary matters applied for include:

- The possible and temporary diversion of seven footpaths;
- A Deemed Marine Licence under Section 66 of the Marine and Coastal Access Act 2009 and Section 149A of the Planning Act 2008;
- The modification of public and local legislation; and
- The compulsory acquisition of land and/or rights over land and powers of temporary occupation of land to allow the applicant to construct, maintain and operate the above development.

GAS SUPPLY CONNECTION

2.17 During operation as a CCGT plant, natural gas would be supplied to the power station by a dedicated supply pipeline to the high-pressure gas network and would not be stored on-site.

SOLID FUEL HANDLING AND DELIVERY

2.18 When operating as an IGCC plant it is anticipated that solid fuel would be delivered by sea to existing deep water port facilities at the River Humber (with subsequent transfer to the existing berth within the wharfage area at CPK), or by rail. When operating as an IGCC plant (scenario E3) the Generating Station would be fuelled by coal (principally), possibly blended with, petroleum coke (petcoke) or biomass or torrefied biomass from which syngas will be produced to fuel the generating station.

2.19 The options for solid fuel delivery to the Project are:

- Transfer by barge to the existing wharfage area of CPK. The solid fuel would then be unloaded from the barge and a closed pipe conveyor system would deliver the fuel to the Operations Area. It is estimated that up to three barge convoys (each of up to four barges) per week would be required in order to meet the maximum anticipated fuel consumption of the Project. The wharfage area would therefore be utilised for approximately 40 per cent of the year.
- Transfer by train directly to the Fuel Handling Area which will be included as part of the Gasification Plant. A worst case assessment of delivery by half-trains has noted that a maximum of 16³ half-train deliveries would be required each day over a 12 hour period. The existing, but not operational,

³ In the Environmental Statement (ES) [APP-009] submitted in March 2013 only 5 half train deliveries per day were assessed.

railway line that serves CPK would need to be modified to provide a new siding in order to accommodate the fuel delivery trains. A rail head, locomotive run-round facilities and an unloading facility would be provided within the Operations Area.

- 2.20 For both of the above options, the on-site storage capacity would be sufficient for at least two weeks' continuous operation of the power station in order to protect operation of the Project from any interruption or disruption to the supply of solid fuel.

GRID CONNECTION

- 2.21 The power station would require an electrical grid connection to export electricity to the national grid via a dedicated underground high voltage cable to South Killingholme National Grid substation.

COOLING WATER CONNECTION

- 2.22 The Project would use a hybrid cooling tower system. This would require a facility to abstract water from the nearby River Humber and, subject to appropriate controls, to discharge water to the River Humber.
- 2.23 The abstraction and discharge connection into the river would comprise two pipes of up to approximately 0.5 metres (m) in diameter (subject to the final design of the Cooling Water Connection and the on-site surface water drainage systems) [APP-114]. They would be laid through that part of the PPA in the ownership of CPK and into the River Humber. The Cooling Water Connection pipe work would be suspended from or adjacent to the existing jetty structures of CPK as shown in Figure 2.4 of the Environmental Statement (ES) [APP-050].
- 2.24 Screening of the cooling water intake would be required to prevent debris, fish, eels and marine mammals entering the cooling water system. The intake points would be protected by Passive Wedge Wire Cylinder (PWWC) fish screens (or similar) directly mounted on the pumps.

PROGRAMME FOR THE DEVELOPMENT

- 2.25 The application documents included an indicative construction programme showing the expected durations and timing of all the major works components [APP-010]. A 36 month works programme for all construction scenarios with no declared starting date was provided.
- 2.26 Paragraph 3.7.3 of the ES [APP-009] sets out the 5 potential development scenarios within the ES:
- Scenario A – Construction of Power Island and Common Facilities only.

- Scenario B – Operation of Generating Station as a CCGT plant.
- Scenario C – Construction of Power Island with the Gasification Plant and Common Facilities.
- Scenario D – Operation of Generating Station as a CCGT plant with subsequent construction of the Gasification Plant.
- Scenario E – Operation of Generating Station as an IGCC plant. There is a further subset of scenarios reflecting different fuels to be used when the Generating Station is operating as an IGCC power plant (i.e. varying proportions of coal, petcoke, biomass and natural gas).

AMENDMENTS TO APPLICATION DURING EXAMINATION

2.27 Amendments to application during examination were as follows:

- Compulsory acquisition order limits for the Electrical Grid Connection land and the Gas Connection land 25 March 2013 involving the following:
- Land Plans Sheets No. 9, No. 10, and No. 11 [Document Reference Numbers: 2.1 to 2.14 dated 20 March 2013] as substituted by Land Plans Sheets No. 9, No. 10, and No. 11 [dated 28 August 2013][APP-008]
- Land Plans Sheets No.2, No.3, No.4, No.5, No.7, and No.9 [dated 24 January 2014]. See Section 3.58 -3.74.

PLANNING HISTORY

2.28 In the immediate vicinity of the application site there have been four recent applications which are of direct relevance to this application [APP-050 see Figure 2.11]:

- Able Marine Energy Park (AMEP)

This development is an NSIP consisting of a quay of solid construction on the south bank of the River Humber (directly contiguous to the south of the application site) together with an ecological compensation scheme comprising both temporary and permanent habitat creation on the opposite bank of the River Humber (approximately 4 km to the south east of the application site). Associated development includes dredging and land reclamation, onshore facilities for the manufacture, assembly and storage of marine energy installation components. Ancillary matters include compulsory purchase of land, harbour regulation and the diversion of two footpaths. AMEP's development consent order (DCO) was made in the form of a statutory instrument and needs to go through Parliamentary processes before coming into effect. This is because the Order contains a certain type of legislative provision i.e. it applies statutory powers to compulsorily acquire land of statutory undertakers, who have sustained their objection to those powers. The Order was made on 13 January

2014 and laid before Parliament on 10 February 2014. The relevance of the AMEP development to this Application is discussed in Sections 4, 5, 6 and 7 below.

- Able Logistics Park (ALP)

ALP consists of a 497.5 hectares (ha) (1,229.5 acres) site with full planning permission in place (received 24 June 2011 from NLC) for the creation of extensive warehousing (1,700,000m²), external storage and transportation depots (directly contiguous to the north of the application site). Tenants of the Logistics Park will benefit from close proximity to 1,389m of deep-water quays. The development of ALP is envisaged to complement AMEP's tenants activities, potentially enabling a 'just in time' approach minimising inventories, sustaining and maximising efficiencies and workflow concepts. ALP will also offer a purpose built Business Park providing office facilities for engineers, consultants, OEMs, supply chain companies, developers and associated businesses. The relevance of the ALP development to this Application is discussed in Sections 4, 5 and 6 below.

- A160 –A180 Port of Immingham Improvement

This application is a nationally significant infrastructure project. It is for works to the A160 between the junction with the A180 at Brocklesby Interchange and the Port of Immingham. The project would widen the existing single carriageway Section of the A160 to dual carriageway, with associated works to junctions along the length of the route. This application is currently under examination by PINS. The relevance of these proposed works to this Application is discussed in Section 4 below.

- Hornsea Offshore Wind Farm (Zone 4) Project One

This application is a nationally significant infrastructure project. Project One is the first development proposed within the Hornsea Zone. Project One will constitute up to three offshore wind generating stations with a total capacity of up to 1,200MWe and will include all offshore and onshore infrastructure. The DCO for Project One would authorise the construction and operation of up to 332 wind turbines, up to two offshore accommodation platforms, up to five offshore HVAC collector substations, up to two offshore HVDC converter stations, an offshore HVAC reactive compensation substation, subsea inter-array electrical circuits, a marine connection to the shore approximately 150 km in length, a foreshore connection and from the proposed landfall point at Horseshoe Point, onshore cables which will connect the offshore wind farms to the onshore electrical transmission station and the connection from there to National Grid's existing substation at North Killingholme (approximately 0.5 km to the south west of the application site), a distance of approximately 40 km. This application is currently under examination by PINS. The relevance

of these proposed works to this Application is discussed in Section 6 and 7 below.

- 2.29 There have been no previous similar applications for this application site. The following planning applications have been submitted within the Application Area since 1974 [REP-060]
- 7/0685/1974 – Erect eight storage tanks and ancillary equipment – North Killingholme Haven, North Killingholme – FP/CONDS – 10/01/1975
 - 7/0849/1987 – Retain a concrete base and eight lighting columns in contractors' compound and to retain a hardcore track and 23 boreholes for monitoring purposes – Former contractors' compound, Rosper Road, North Killingholme – FP/CONDS – 19/11/1987
 - 7/0129/1989 – To retain a borehole – Land west of Clough Lane, North Killingholme – FP/CONDS – 06/04/1989
 - 7/0903/1989 – Change use of land to open storage and screening – North of cargo terminal, Clough Lane, North Killingholme – FP/CONDS – 01/02/1990 (small part only)
 - 7/0420/1990 – Continue use of land without complying with condition 2 and condition 8 subject of previous planning permission – North of cargo terminal, Clough Lane, East Halton and North Killingholme – FP/CONDS – 01/02/1990 (small part only)
 - 7/0186/1992 – Construct a marine freight terminal facility with associated roads, warehousing, lorry parking areas, administrative service and amenities buildings, together with a port-related business park manufacturing and storage development – OP/CONDS – 19/11/1992
 - 7/0636/1993 – Change the use of land to open storage of coal products with associated size screening operations – Land north of cargo terminal, Clough Lane, East Halton - FP/CONDS – 10/02/1994
 - 1827/1996 – Planning permission to vary condition 2 of outline planning permission 7/0186/1992 in order that reserved matters may be submitted within a further three year period – Site of North Killingholme cargo terminal, Clough Lane, North Killingholme - granted conditionally 23/12/1996
 - 0811/1999 – Planning permission to construct an underground gas pipeline and utilities corridor – Land between Station Road and East Halton Skitter east of Rosper Road and east of Skitter Road, North Killingholme – Withdrawn – 20/07/2006
 - 0821/1999 – Planning permission to construct nine below-ground multiple steel pipelines with an above-ground block valve compound – BP Pipeline, Rosper Road, South Killingholme – EIA/APP/FULL – 14/07/2000 (on boundary)
 - PA/2005/1096 - Certificate of Lawful Use for an existing use of open storage and distribution – Granted 18/08/2005 (site lies within the Operations Area)

- PA/2004/1162 – Construction of hardstanding, security fencing, lighting services, operating kiosks and a railhead to provide car and trailer handling and storage facility – Granted 09/07/2007 (site lies immediately north east and east of the Operations Area)

EUROPEAN SITES

- 2.30 The proposed development at Killingholme in North Lincolnshire would lie on the south bank of the Humber Estuary, which is designated under European law as an important site for nature conservation and forms part of the Natura 2000 network of sites.
- 2.31 The inter-tidal and terrestrial portions of the Humber Estuary that would be potentially directly and indirectly affected by the proposed NSIP (see RIES [REP-246]) are protected by three European nature conservation designations, namely the:
- (i) Humber Estuary Special Area of Conservation (SAC),
 - (ii) Humber Estuary Special Protection Area (SPA) and
 - (iii) Humber Estuary Ramsar site.

These are referred to collectively as the European sites.

- 2.32 The Humber Estuary was first designated by the UK Government as a Ramsar site under the Convention on Wetlands of International Importance on 28 July 1994. The Humber Estuary was first classified by the UK Government as an SPA under the provisions of the Birds Directive on 28 July 1994. The Ramsar site and the SPA were extended on 31 August 2007. The Ramsar site covers 37,987 ha and the SPA 37,630 ha [REP-019]. The SAC was designated by the Secretary of State for Environment, Food and Rural Affairs under the Habitats Directive on 10 December 2009 and covers 36,657 ha [REP-019]. The three European designations all relate to the Humber estuary taken as a whole and for the most part overlap. By virtue of these designations the estuary is part of Natura 2000, an ecological network of protected areas, set up to ensure the survival of Europe's most valuable species and habitats.
- 2.33 The Humber Estuary was previously notified as seven biological and geological Sites of Special Scientific Interest (SSSIs) covering the intertidal and terrestrial periphery of the estuary. The Humber Estuary SSSI was notified on 3 February 2004 and includes all seven of these SSSIs and also enlarges the area notified to include the entire estuary and the associated features of interest. This extends from the limit of saline intrusion on the rivers Ouse and Trent to the mouth of the estuary, as well as some terrestrial areas that support some of the estuarine features. The enlarged area also includes the geomorphological interest at Spurn. A whole estuary approach to this notification allows for the dynamic intertidal and sub-tidal areas to change naturally and remain

within the site boundary [REP-019] [REP-021]. In addition, a 21.6 ha group of coastal lagoons formed by gravel extraction which lie adjacent to, and to the south of, the main application site, bounded to the north-west by Haven Road and to the north east by the seawall, and to the west by a currently disused railway [APP-050 see Figure 7.1] is separately designated as the North Killingholme Haven Pits (NKHP) SSSI, notified under Section 28 of the Wildlife and Countryside Act 1981 (WCA).

- 2.34 NKHP was notified as a SSSI on 15 January 1996. The main reason for notification was due to its importance as large saline lagoons with an exceptionally rich fauna. At North Killingholme the seawall is the formal boundary for the European site designations with the important exception that immediately to the south-east of the application site, the boundary of the SPA and the Ramsar site extends inland to take in the NKHP SSSI [REP-022].
- 2.35 The site comprises three pits of differing size and salinity, both factors, which contribute to its national and local importance. Nine species of specialist lagoonal species recorded from the pits include the polychaete worm *Alkmaria romijni*, which is known from just four sites in Great Britain. Other species of note include the prawn *Palaemonetes varians*, the molluscs *Hydrobia ventrosa* and *Hydrobia neglecta* and the bryzoan *Conopium seurati*. The number of specialist lagoonal species is exceptionally high in NKHP and particularly so for their latitude.
- 2.36 Water levels within the lagoons vary and provide expanses of open mud for visiting waterfowl, especially waders. Amongst these are nationally important numbers of black-tailed godwits, which have visited the site in increasing numbers since the late 1980s. There are also occasional visits by large flocks of roosting redshank. These visitors indicate that NKHP form an integral part of the estuarine feeding and roosting opportunities for the internationally important populations of winter waterfowl for which the Humber Estuary is noted [REP-019].

3 LEGAL AND POLICY CONTEXT

PLANNING ACT 2008, AS AMENDED

- 3.1 The application is a nationally significant infrastructure project (NSIP), being an electricity generating station with a capacity of more than 50MWe (Planning Act 2008, s14 (1) (a) and s. 15 (2)). Accordingly, the principal policy basis against which the proposal must be decided is that set out in the relevant National Policy Statements (NPS) (Planning Act 2008, s104).
- 3.2 Whilst other policies, including those contained in the development plans for the area, may constitute matters that the Secretary of State may regard as important and relevant to the decision, the primacy of the NPSs is clear (Planning Act 2008 s104(3) and NPS EN-1, paragraph 1.1.1). In the event of a conflict between policies contained in any other documents (including development plan documents) and those contained in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).

NATIONAL POLICY STATEMENTS

- 3.3 The Examining Authority (ExA) has had regard first and foremost to the requirements of the Planning Act 2008, as amended. In relation to s.104 the ExA has had regard to the matters in subsection (2).
- 3.4 There are two relevant NPSs (s.104 (2) (a) of Planning Act 2008) for Energy in force:
- Overarching National Policy Statement for Energy EN-1;
 - National Policy Statement for Fossil Fuel Electricity Generating Infrastructure EN-2.
- 3.5 These two NPSs formed the primary policy context for this examination. These were formally designated as statements of national policy and presented to Parliament in accordance with s5(9) of the Planning Act 2008 in July 2011, and the ExA's views on their significance for this application are set out in Section 4.
- 3.6 Section 1.1.2 of EN-1 states that:
- The Planning Act 2008 also requires that the IPC⁴ must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent it is satisfied that to do so would:*
- *lead to the UK being in breach of its international obligations;*
 - *be in breach of any statutory duty that applies to the IPC;*

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- *be unlawful;*
- *result in adverse impacts from the development outweighing the benefits; or*
- *be contrary to regulations about how its decisions are to be taken.'*

3.7 In relation to s.104 of Planning Act 2008 the ExA has had regard to the matters in subsection (2)(b). One Local Impact Report (LIR) from NLC [REP-060] was submitted and is considered in Section 4.12 - 4.13 below.

3.8 In relation to s.104(4) of Planning Act 2008 the question whether deciding the application in accordance with the NPS would lead to the UK being in breach of its international obligations under the Habitats Directive is considered in Section 5 below.

INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS

3.9 The application is also subject to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, as amended by the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012, and in particular Regulation 3⁵, which requires the Secretary of State to take the environmental information into consideration before taking a decision.

3.10 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). It was accompanied by an ES [APP-009 to APP-051]. Supplementary environmental information was supplied during the course of the examination. In reaching our conclusions and recommendation, the environmental information as defined in Regulation 2(1) (including the ES and all other information on the environmental effects of the development) has been taken into consideration (see Section 4).

LOCAL IMPACT REPORT

3.11 On 6 August 2013 a deadline for receipt of LIRs was given to the local authorities [DEC-004]. An LIR was submitted by North Lincolnshire Council (NLC) [REP-060]. The principal matters raised in the LIR are:

⁵ **3.- Prohibition on granting consent without consideration of environmental information**

3.—(1) This regulation applies to—

(a) every application for an order granting development consent for EIA development received by the Commission; and (b) every subsequent application for EIA development received by a relevant authority on or after 1st March 2010. (2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so.

- Landscape and Visual impact;
- Local transport routes;
- Archaeology;
- Footpaths/Public Rights of Way (PROW);
- Historic and Built Environment;
- Socio-Economics;
- Residential nuisance;
- Flood risk/drainage;
- Biodiversity and ecology;
- Waste and
- Health issues.

3.12 These are considered in Section 4 of this Report below.

EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

Habitats Directive (Council Directive 92/43/EEC)

3.13 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars:

- (i) the Natura 2000 network of protected sites and
- (ii) the strict system of species protection.

The directive protects over 1000 animals and plant species and over 200 habitat types, which are of European importance.

Birds Directive (Council Directive 2009/147/EC)

3.14 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union (EU). The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as SPAs comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

3.15 The relevance to this application is discussed in Section 5 below. In paragraphs 4.1.3, 6.3.3 and Table 3 of the Applicant's Report to inform the Habitats Regulations Assessment [APP-058], the Applicant accepts that at the proposed development:

- is a project within the terms of the Habitats Regulations;
- that it would be likely to have a significant effect on the Humber Estuary Natura 2000 network and
- that an Appropriate Assessment (AA) should be carried out.

Conservation and Species Regulations 2010 (as amended)

the Habitats Regulations

Conservation of Habitats and Species (Amendment) Regulations 2012

- 3.16 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.17 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles. The EU Habitats and Wild Birds Directives are transposed in UK offshore waters by separate regulations – The Offshore Marine Conservation (Natural Habitats) Regulations 2007 (as amended).
- 3.18 These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.
- 3.19 The relevance to this application is discussed in Section 5 below, and in the Natural England (NE) written representation [REP-019]. The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) are engaged because this case involves the Humber Estuary SAC and the Humber Estuary SPA which, as European sites, are subject to the protection required by Article 6(2) of the Habitats Directive.
- 3.20 In determining these applications, the Secretary of State for Environment and Climate Change will be acting as competent authority for the purposes of regulations 61, 62 and 66 of the Habitats Regulations.

Water Framework Directive

- 3.21 On 23 October 2000, the "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" or, in short, the EU Water Framework Directive (WFD) was adopted.
- 3.22 The relevance to this application is discussed in Section 4 below. Under the requirements of the WFD, which is transposed into UK legislation by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003. The EA has published the

"River Basin Management Plan (RBMP): Humber River Basin District" (2009) which defines the existing water quality of the River Humber and identifies the pressures that are affecting the potential to reach the "good status" required by the WFD.

Directive 2010/75/EU of 24 November 2010 on industrial emissions (Integrated Pollution Prevention and Control (IPPC)) and (the "Industrial Emissions Directive" ("IED"))

- 3.23 Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (IED) recast seven directives related to industrial emissions, in particular Directive 2008/1/EC of 15 January 2008 concerning integrated pollution prevention and control (the Integrated Pollution Prevention and Control (IPPC) Directive) and Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (the Large Combustion Plant Directive (LCPD)), into a single legislative instrument to improve the permitting, compliance and enforcement regimes adopted by Member States.
- 3.24 The LCPD and IPPC Directive are implemented in the UK by the Environmental Permitting (England and Wales) Regulations 2010 (the EP Regulations). Environmental Permitting (England and Wales) Regulations 2010.
- 3.25 The Environmental Permitting (England and Wales) Regulations 2007 sought to introduce a single streamlined environmental permitting and compliance regime to apply in England and Wales. They do this by integrating the previous regimes covering waste management licensing and Pollution Prevention and Control. The EP Regulations increase the scope of the 2007 Regulations.
- 3.26 The EA will control and regulate the Project with respect to the emissions to air from the Main Stack and the Flare Stack via an Environmental Permit⁶ that will be required for the Project, under the EP Regulations. The Environmental Permit will include specific emissions limits values to apply to the Project for the relevant pollutants considered within the IED. These regulations are discussed in Section 4 below.

Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe (the "Ambient Air Quality Directive")

- 3.27 Council Directive 96/62/EC on ambient air quality assessment and management (the Air Quality Framework Directive) described the basic principles as to how air quality should be assessed and managed in the Member States. Subsequent daughter Directives

⁶ The applicants EP application was accepted as "duly made" by the EA on the 10 March 2014 one day before the end of the examination [REP-296].

introduced numerical limits, thresholds and monitoring requirements for a variety of pollutants including oxides of nitrogen and sulphur dioxide to guarantee that there are no adverse effects with regard to human health.

- 3.28 The Air Quality Standards Regulations 2010 (the AQS Regulations) give effect, in England, to the Ambient Air Quality Directive. The relevance of these standards to this application are discussed in Section 4 below.

Directive 2009/31/EC of 23 April 2009 on the geological storage of carbon dioxide amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC)

- 3.29 The EU agreed the text of the Directive on the geological storage of carbon dioxide (Directive 2009/31/EC) (the CCS Directive) on 17 December 2008. This text was published in the Official Journal of the EU on 5 June 2009 and the CCS Directive came into force on 25 June 2009.

- 3.30 The CCS Directive requires an amendment to Directive 2001/80/EC on the limitation of emissions of certain pollutants from large combustion plants (commonly known as the Large Combustion Plant Directive or LCPD). Consequently, Member States are required to ensure that operators of all combustion plants with an electrical power generating capacity of 300MWe or more (and for which the construction/ operating licence was granted after the date of the CCS Directive) have assessed whether the following conditions are met in respect of each combustion plant:

- Suitable storage sites for CO₂ are available;
- Transport facilities are technically and economically feasible;
- and,
- It is technically and economically feasible to retrofit the combustion plant for CO₂ capture.

- 3.31 The assessment of whether these conditions are met is to be submitted to the relevant competent authority, who will use the assessment (and other available information) in their decision-making process in respect of consent for each combustion plant. If the conditions are met, the competent authority is to ensure that suitable space is set aside for the CO₂ capture technology necessary to capture and compress CO₂ from the combustion plant.

- 3.32 The CCS Directive will therefore apply to the Project. This issue is addressed further in Section 4 below.

The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 , No. 2696, came into force on

the 25 November 2013.

3.33 The Regulations state in Section 2:

For the purposes of these Regulations, the CCR conditions are met in relation to a combustion plant, if, in respect of all of its expected emissions of CO₂—

- (a) suitable storage sites are available;*
- (b) it is technically and economically feasible to retrofit the plant with the equipment necessary to capture that CO₂; and*
- (c) it is technically and economically feasible to transport such captured CO₂ to the storage sites referred to in subparagraph (a).*

3.34 In determining these applications, the Secretary of State for Energy and Climate Change will be acting as the Competent Authority. The relevance of these Regulations to this Application are discussed in Section 4 below.

MARINE AND COASTAL ACCESS ACT 2009

UK Marine Policy Statement

3.35 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of s.44 of the Marine and Coastal Access Act 2009 and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.

3.36 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.

3.37 The MPS has provided the overarching policy context for the ExA's consideration of the application's offshore works and Deemed Marine Licence (DML) (see Section 7 and [APP-114]).

Inshore Marine Plans

3.38 The plan for the East Inshore Marine Area was formally adopted in April 2014⁷. The ExA considers that there are no specific implications within this plan, for the ExA's consideration of the application offshore works and DML.

⁷ http://www.marinemanagement.org.uk/marineplanning/areas/east_plans.htm

NATIONAL PLANNING POLICY

National Planning Policy Framework, 2012

3.39 The National Planning Policy Framework (NPPF) was published on 27 March 2012. The NPPF sets out the Government's planning policies for England and how these are expected to be applied.

3.40 The NPPF states in paragraph 3 that it:

...does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and are a material consideration in decisions on planning applications.

3.41 NPPF policies are not a material consideration under the Planning Act 2008, but it is important and relevant to this application in certain parts. These are highlighted in Section 4 below.

3.42 On 6 March 2014 the previous planning guidance documents were replaced by the new guidance. The guidance supports the NPPF and is designed to provide useful clarity on the practical application of policy.

The Wildlife and Countryside Act 1981 (as amended)

3.43 The Wildlife and Countryside Act 1981 (WCA 1981) is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England Natural England). The Act also contains measures for the protection and management of SSSIs.

3.44 If a species protected under Part I of the Act is likely to be affected by development, a protected species license will be required from NE. The relevance of this is discussed further in Section 4 below.

3.45 In relation to the application it has relevance to consideration of impacts on Humber Estuary and NKHP SSSIs and on protected species and habitats, which will be assessed in Sections 4 and 5 below.

3.46 Section 28G of the Wildlife and Countryside Act 1981 (WCA) places legal obligations on public authorities in relation to SSSIs. These authorities are known as Section 28G authorities', and the

definition given at s.28G(3) embraces all public office-holders including the Secretary of State and the ExA.

- 3.47 An authority to whom Section 28G applies has a duty in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a SSSI is of special interest to:

...take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

- 3.48 In addition, where the permission of a Section 28G authority is needed before proposed operations may be carried out, the Section 28G authority must, in accordance with Section 28I(5) of the WCA 1981, take any advice received from NE into account:

- in deciding whether or not to permit the proposed operations; and
- if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.

- 3.49 Permission is defined so as to include any kind of consent or authorisation⁸. As the Applicant requires development consent from the Secretary of State in order to proceed with its proposals, and as the Secretary of State is a Section 28G authority, the duties under Section 28I(5) apply to the Secretary of State⁹. In relation to the application these matters are considered in Sections 4 and 5 below.

Natural Environment and Rural Communities Act 2006

- 3.50 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

- 3.51 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development.

- 3.52 In relation to the application these matters are considered in Sections 4 and 5 below.

⁸ Wildlife & Countryside Act 1981 s. 28I(7)

⁹ Natural England accepts that the notice requirements of Section 28I(2) to (4) have been satisfied for the purposes of the Secretary of State's determination of the planning applications at issue here[REP-019].

Transboundary Effects

- 3.53 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) and on the basis of the current information available from the Developer, the Secretary of State is of the view that the proposed development is not likely to have a significant effect on the environment in another EEA State [PD-005].
- 3.54 In reaching this view the Secretary of State has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12, Transboundary Impacts Consultation). Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary.
- 3.55 The ExA is satisfied that with regard to regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, all potential transboundary biodiversity matters have been addressed and there are no matters outstanding that would argue against the Order being confirmed.

United Nations Environment Programme Convention on Biological Diversity 1992

- 3.56 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this Convention and in particular Articles 6, 7 and 8 in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation.
- 3.57 The ExA's findings are provided in Section 5 below.

Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011)

- 3.58 Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011) states in Box 2:

Box 2: Why investment in low-carbon technologies differs from standard investment choices

Gas-fired power stations are a mature technology with low and predictable capital expenditure. They are quick to build and their fuel costs, which are a large proportion of operating costs, are naturally hedged because the price of electricity moves in line with the price of gas, since gas (or sometimes coal) is typically the price-setting (or marginal) plant. Their generation costs will tend to fall in line with any fall in revenues as electricity prices fall, preserving profitability. Gas-fired power stations are able to run flexibly and can therefore relatively easily respond to shifting demand. The costs of flexing a gas plant to respond to daily peaks in demand are relatively modest although more frequent

stop/start and fast ramp-up operations do have a significant impact on maintenance costs'.

This is of relevance to the need case discussed at paragraph 4.21 below.

THE LOCAL DEVELOPMENT PLAN/CORE STRATEGY

3.59 Development Plan Policy is currently based on the North Lincolnshire Core Strategy (adopted June 2011) and the saved policies of the North Lincolnshire Local Plan (adopted May 2003).

3.60 Paragraph 4.1.5 of EN-1 states:

Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure. The energy NPSs have taken account of relevant Planning Policy Statements (PPSs) and older-style Planning Policy Guidance Notes (PPGs) in England and Technical Advice Notes (TANs) in Wales where appropriate.

North Lincolnshire Core Strategy¹⁰

3.61 The North Lincolnshire Core Strategy, which was adopted in June 2011, sets out the long term vision for North Lincolnshire and provides a blueprint for managing growth and development in the area up to 2026. The Core Strategy sets out the long term spatial planning framework for the development of North Lincolnshire up to 2026 by providing strategic policies and guidance to deliver the vision for the area including the scale and distribution of development, the provision of infrastructure to support it and the protection of the natural and built environment with a strong focus on the principles of sustainable development. The spatial strategy set out in the Core Strategy has been shaped by national and regional planning policy as well as the Sustainability Community Strategy. Other influences include extensive public consultation, the Sustainability Appraisal/Strategic Environmental Assessment and the evidence base.

3.62 The North Lincolnshire Core Strategy is the most important element of the North Lincolnshire Local Development Framework. It is part of the development plan for North Lincolnshire and is used to make decisions on planning applications.

¹⁰ <http://www.northlincs.gov.uk/planning-and-environment/planning-policy/local-dev-framework/>

3.63 Policies CS1 and CS12 identify the South Humber Bank ports as nationally and internationally important and safeguards some 900 hectares (ha) of land in and around the port complexes of Immingham Port and the Humber Sea Terminal for estuary related development as well as to support the continued growth of the chemical and renewable energy industries. Policy CS12 continues the aims of the Regional Spatial Strategy (RSS) and North Lincolnshire Local Plan by specifically identifying the South Humber Bank as being important for creating port facilities, including the opportunity to specifically create a new port and safeguards the frontage to the estuary for such facilities and Policy CS26 promotes significant transport improvements to rail, water and road transport modes regarding improved accessibility to the South Humber Ports. Directly linked to policies CS12 and CS26 is an Interim Planning Policy Statement approved by NLC in 2011 that requires developers to contribute towards transport improvements within the South Humber Bank Employment allocation. Other policies are not specifically about the South Humber Bank allocation but are nevertheless linked as general policies that bear some relevance to this application and are addressed further in Section 4 below:

- Policies CS16 (Landscape, Greenspace and Waterscape),
- CS17 (Biodiversity),
- CS18 (Sustainable Resource Use and Climate Change) and
- S19 (Flood Risk).

North Lincolnshire Local Plan¹¹

3.64 The North Lincolnshire Local Plan (NLLP Adopted May 2003) allocates a gross area of 740.7 ha of land for estuary related B1, B2 and B8 industrial land uses at the South Humber Bank between South Killingholme Haven and East Halton Skitter and includes the land in question. This land is allocated under policies IN1-1 and IN4 and IN5. Policy IN4 defines estuary related industrial land uses, and includes the North Killingholme Power Project site. There are other policies that have links to the South Humber Bank employment site in terms of nature conservation and landscape; these are LC2, LC4 and LC20. These policies have been saved and run concurrently with the Core Strategy.

3.65 The Project will be developed on land within the South Humber Bank Strategic Employment site in accordance with the adopted Core Strategy spatial vision and allocation in the saved policies of the adopted Local Plan. The application site is located within the South Humber Bank Industrial Area which is designated for industrial and commercial development in the Development Plan [APP-050 see Figure 2.9].

¹¹ <http://www.northlincs.gov.uk/planning-and-environment/planning-policy/local-dev-framework/>

- 3.66 Conformity with the Local Development Plan policies is assessed in Section 4.12 below.

THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

- 3.67 The Secretary of State is requested to note that the application as submitted on 25 March 2013 contained a request for the compulsory acquisition (CA) of land and/or rights on 119 plots of land involving 53 parties with an interest in that land in categories 1, 2 or 3 of s.57 of the Planning Act 2008.
- 3.68 The application was accompanied by a Book of Reference [APP-008], a Statement of Reasons [APP-052], a Funding Statement [APP-053], a Grid Connection Statement [APP-061], a Gas Connection Statement [APP-062] and a Combined Land and Works Plan [APP-004].
- 3.69 On 12 September 2013, the day on which the examination began, the applicant requested an alteration to the Order Limits for the application [APP-069]. After consultation with all affected persons and interested parties and consideration, the ExA issued a procedural decision on 4 October 2013 allowing the changes to the Order Limits [DEC-006]. This change had the effect of removing part of two plots and the whole of 48 separately identified plots - in which twelve parties had an interest - from the request for CA.
- 3.70 It should be noted that the applicant's draft DCO defined the Order limits as being the outer limits of the land within which the authorised development could be carried out and the Order land as being land within the Order limits. This has been clarified by amendments to the definition of Order land and Order limits so as to make clear the extent of land to which powers of CA under Article 16 will relate.
- 3.71 On 13 December 2013 [DEC-010] the ExA set a deadline of Friday 24 January 2014 for the receipt by the ExA of any further proposals by the applicant for changes to the order limits and stated that these should be accompanied by any consequential proposed changes to the land plans, Book of Reference and Statement of Reasons.
- 3.72 Consequent on this, a further application to change the Order Limits was made by the applicant on 24 January 2014 [APP-106]. After consideration, the ExA issued a procedural decision on 3 March 2014 [DEC-016] allowing the further changes to the Order Limits. This change had the effect of removing further parties entirely from the list of affected persons and of removing part of several plots and the whole of other separately identified plots from the request for CA.
- 3.73 In both the procedural decisions cited above, the ExA carefully considered the issue of the materiality of any changes to the Order limits having particular regard to the guidance in paras. 105 to

107 of the Department for Communities and Local Government (DCLG) guidance on *Planning Act 2008 Guidance for the examination of applications for development consent* published in April 2013. and it applied the test set in *Bernard Wheatcroft Ltd v Secretary of State for the Environment* (1982) 43 P & CR 233 as to whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation.

- 3.74 In both cases, the ExA concluded that it did not consider that the materiality of the change applied for was of such a degree that it constitutes a new project but did conclude that, following the applied for reduction on the order limit, the revised proposal can still be considered under the existing application.
- 3.75 Thus there remains a request for the CA of land and rights affecting 62 plots over which 23 affected persons have rights.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

MAIN ISSUES IN THE EXAMINATION

Preliminary Identification of Principal Issues

- 4.1 In accordance with s.88 of PLANNING ACT 2008, the Examining Authority (ExA) made an initial assessment of the principal issues arising from the ExA's consideration of the application documents and relevant representations [RR-001 to RR-027] received concerning the North Killingholme Power Project. This was sent to all Interested Parties and Affected Persons on 6 August 2013 [DEC-004] and was part of the agenda for the Preliminary Meeting (PM) held on the 11 September 2013. The ExA has had regard to all important and relevant matters in putting forward this recommendation to the Secretary of State.
- 4.2 The ExA received several requests during the PM for additions to be made to the list of Principal Issues. These covered the farming economy, compulsory acquisition (CA) of land not included in the application for works, cumulative effects of greenhouse gases and public health issues.
- 4.3 The ExA confirmed that the principal issues have broad headings, and that all the issues would be covered by the relevant heading in the Principal Issues [DEC-005]. The ExA confirmed that these issues would be examined in accordance with national policy and under the procedure established in the Planning Act 2008, as amended, and relevant secondary legislation.
- 4.4 The ExA also pointed out there was no reason why any of these matters should not be properly raised by the Interested Parties or Affected Persons as part of their written representations [HR-003].
- 4.5 The selection of these issues informed the ExA first round of written questions [DEC-005] and decisions as to which topics might require Issue Specific Hearings.
- 4.6 The following Sections (4.8 onwards below) of the report deal with the matters that have emerged as the key issues in the Examination, which are of relevance to the Secretary of State's final decision.
- 4.7 The ExA examined concerns relating to operational issues - identified as one of the principal issues, through questions Op1 to Op28 in the ExA's first written questions [DEC-005]. Following the responses to those questions, the issues arising from operational matters were subsumed into, and considered under, the headings of the other principal issues identified [DEC-005].

Issues arising from Written and Oral Submissions

- 4.8 Twenty seven Relevant Representations were received in the pre-examination period [RR-001 to RR-027]. The issues raised informed the initial identification of Principle Issues [DEC-004].
- 4.9 The ExA's findings and conclusions to all the issues raised in the written and oral submissions are summarised in the rest of Sections 4 and 5 below.

Issues arising in Local Impact Report

- 4.10 The issues arising from NLC's Local Impact Report (LIR) [REP-060] are listed in paragraphs 3.11 - 3.12 above, and discussed in the relevant Sections below.
- 4.11 The applicant was the only commentator [REP-168,169] on NLC's LIR [REP-060]. The applicant and NLC reached agreement on issues raised in the LIR via agreed requirements in the draft DCO [APP-107] and Statement of Common Ground (SoCG) [REP-281].

Conformity with local plan policies

- 4.12 NLC's LIR [REP-060] states at paragraph 4.5.1:

In the opinion of the local planning authority the North Killingholme Power Project proposal generally complies with Development Plan Policy and therefore the local planning authority has no objections to the proposed development on planning policy grounds.

- 4.13 The ExA has had no reason to disagree with the above statement.

Issues arising in Statements of Common Ground (SoCG)

- 4.14 SoCGs were agreed between the applicant and:

- English Heritage [REP-275];
- Natural England (NE) [REP-234];
- Environment Agency (EA) [REP-233];
- North Lincolnshire Council (NLC) [REP-281] and
- North East Lincolnshire Council & Highways Agency [REP-295].

- 4.15 NLC have three remaining areas they could not agree with the applicant:

- The degree of the effect of the Project on the setting of Thornton Abbey, as experienced from Thornton Abbey Station and the footpath between the Station and the Abbey;
- The degree of the effect of the Project on the setting of Manor Farm, East Halton; and

- Mitigation strategy for heritage assets with archaeological interest.

These are discussed further in this Section 4 below.

4.16 NE have two remaining areas they could not agree with the applicant:

- NE believe there is a reasonable scientific doubt surrounding the habituation of birds, in particular for the black-tailed godwit, to visual and noise disturbance from train movements [REP-234 paragraphs 6.9.6 to 6.9.9]. This is discussed further in 4.131 - 4.136 below.
- NE confirmed in the SoCG [REP-234] at paragraph 10.10.1, that the ultimate decision as to whether an European Protected Species (EPS) licence for bats is required lies with the applicant. However, it does not believe that the applicant's current survey information is adequate to inform a decision as to whether an EPS licence is required. This is discussed further in paragraph 4.130 - 4.131 below.

Conformity with NPS EN-1 and EN-2

4.17 The project is a Nationally Significant Infrastructure Project comprising a generating station as defined in Sections 14(1)(a) and 15 of the Planning Act 2008

4.18 National Planning Statement (NPS) EN-1 paragraph 3.1 states:

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.

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.

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.

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

4.19 Paragraph 3.6.1 and 3.6.2 of NPS EN-1 states:

Fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to

changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy, and Government policy is that they must be constructed, and operate, in line with increasingly demanding climate change goals.

...Similarly, although a proportion of coal used in British generating stations is imported, the UK still has its own reserves. Further, coal is available globally and most generating station operators will already have alternative suppliers depending on prevailing market conditions. This ability to source fuel from alternative suppliers helps to give stability to the UK's generating capacity.

- 4.20 The applicants states in paragraph 11.5.5 and 11.5.6 of the ES [APP-009] that:

The generation of electricity from the Project will add to the UK's generating capacity and flexibility of the generator fleet to contribute power to the NETS. This enhances security of supply and is an important contributing factor supporting economic activity.

The Project is capable of delivering sufficient energy to power 1 million homes. It also counteracts the impacts to generation capacity within the UK as a result of the pending retirement and decommissioning of older, less environmentally generating stations. Government decisions on planning applications have afforded material weight to the power generated by developments of less than 10 MWe generating capacity. As such, the materially greater generating capacity represented by the Project is a major benefit of the Project that is measurable at the national level and considered for the purposes of this ES to be permanent.

- 4.21 The question of need was not raised by any party during the course of the examination. NPS EN-1 states at para 3.1 that:

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

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.

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.

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

- 4.22 The impacts of the project and general conformity with the NPS EN-1 and EN-2 are discussed in the Sections below.
- 4.23 The financial viability of the scheme, taking into account para 4.1.9 of EN-1 4.1, is considered in Section 6 of this report, below.

Environmental Statement and Environmental Impact Assessment (EIA) and the Report to Inform Habitats Regulations Assessment

- 4.24 The adequacy of the EIA/ES [APP-009] and the Report to Inform Habitats Regulations Assessment [APP-058] and their assessment of potential impacts was highlighted in the initial identification of principal issues [DEC-004].
- 4.25 During the course of the examination the adequacy of the information provided in the ES [APP-009] and Report to Inform Habitats Regulations Assessment [APP-058] has been questioned, by Natural England (NE) and Able Humber Ports (Able).
- 4.26 NE expressed concerns initially in their relevant representations [RR-027] and subsequently in the Habitats issue specific hearings [HR-084;HR-114] and in their responses to first and second round questions [REP-063;REP-227].
- 4.27 ABLE expressed concerns initially in their written representations (they commissioned a review of the ES by SKM [REP-009] and subsequently in the EIA and Habitats issue specific hearings [HR-073;HR-075;HR112].
- 4.28 The HRA information is considered separately in Section 5.
- 4.29 The applicant provided information on the environment and its assessment of these issues in an ES [APP-009] consisting of four volumes:
- Volume I ES [APP-009];
 - Volume II consisting of 40 supporting appendices [APP-010 to APP-049];
 - Volume III Figures [APP-050] and
 - Volume IV a standalone Non-Technical Summary [APP-051].
- 4.30 NPS EN-1 Paragraph 4.2 states:

The IPC should request further information where necessary to ensure compliance with the EIA Directive.

- 4.31 The ExA investigated the adequacy of the information provided in the ES and the Report to Inform Habitats Regulations Assessment, in the first [DEC-005] and second [DEC-010] round of written questions and in their questions to the applicant at the EIA and Habitats issue specific hearings [HR-012; HR-013; HR-037 to HR-039; HR-094 to HR-095].
- 4.32 The applicant's responses can be found at [first, REP-089; REP-099; second, REP-185; REP-200].

Conclusion Environmental Statement and Environmental Impact Assessment (EIA) and the Report to Inform Habitats Regulations Assessment

- 4.33 It is the view of the ExA that the overall environmental information supplied, is sufficient for the Secretary of State to take into consideration before making a decision in compliance with the Infrastructure Planning (Environmental Impact Assessment) Regulation 3(2)¹².

Consideration of alternatives

- 4.34 The EIA Regulations¹³ require that an ES should include an outline of the main alternatives that have been studied by the applicant and an indication of the main reasons for its choices, taking into account the likely significant environmental impacts of each alternative.
- 4.35 NPS EN-1 (Para. 4.4.1-4.4.2) states:

From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. Furthermore, it is not necessary to consider alternative technologies for generating stations.

However:

- *applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the*

¹² **3.- Prohibition on granting consent without consideration of environmental information**

3.—(1) This regulation applies to—

(a) every application for an order granting development consent for EIA development received by the Commission; and (b) every subsequent application for EIA development received by a relevant authority on or after 1st March 2010.

(2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so.

¹³ Infrastructure Planning (Environmental Impact Assessment) Regulations (Amended) 2012.

environmental, social and economic effects and including, where relevant, technical and commercial feasibility;

- 4.36 In the case of the Project, the alternatives that have been considered are detailed in Section 4 of the ES [APP-009]:
- Alternative development sites;
 - Alternative layouts;
 - Alternative technologies for electricity generation;
 - Alternative technologies for cooling and the routes for any water abstraction / discharge infrastructure (the Cooling Water Connection);
 - Alternative fuel handling and delivery options;
- 4.37 Able contended in their relevant representations [RR-023] that the assessment of alternatives has not been validly carried out. Their view was that sites near C.RO Ports Killingholme (CPK) have been identified as suitable on the basis of convenience to the applicant and the assessment has stopped there.
- 4.38 The ExA addressed the adequacy of the information provided on alternatives, in the first round of written questions [DEC-005] (Questions to applicant, EIA15 and EIA18) and in their questions to the applicant at the EIA issue specific hearing [HR-041; HR-042].
- 4.39 The applicant's responses can be found at [REP-089]. The applicant argued that siting options that have been considered for the Project are discussed in Section 4.3 of the ES [APP-009], which summarises the two options for the siting of the generating station. These options were consulted on during the EIA Scoping process [PD-001] and, prior to publication of the Preliminary Environmental Impact Report (PEIR), before a decision was made to bring forward development of the generating station within the Operations Area.

Conclusion on the consideration of alternatives

- 4.40 The ExA considers that the applicant has addressed the case in relation to:
- Alternative sites;
 - Alternative designs; and
 - Alternative methods of operation.
- 4.41 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), state at Schedule 4, Part 1 18 that the ES [APP-009] needs to provide:

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

- 4.42 Under the EIA Regulations¹⁴ there is no requirement to assess all potential alternatives, only a requirement to provide a review of those alternatives that have actually been considered.
- 4.43 The ExA consider that the examination of alternatives has been addressed adequately and that the requirements of NPS EN-1 and the EIA Regulations are met.

Mitigation measures

- 4.44 A series of mitigation measures have been proposed within the ES Sections [APP-009] and Construction Environmental Management Plan (CEMP) [APP-011; REP-187]. They have been secured through the draft DCO requirements and DML Conditions [APP-114].
- 4.45 All works on-site will be undertaken in compliance with the final CEMP as secured by Requirement 14 which is contained in Part 3 of Schedule 1 to the draft DCO [APP-114].
- 4.46 Section 7 contains a description of key draft DCO Requirements, and explanation of modifications either agreed by the applicant or proposed by the ExA together with the identification of who has responsibility for discharge of specific requirements.

DESIGN, LAYOUT AND VISIBILITY

- 4.47 An issue specific hearing on Design, Layout and Visibility was held on 29 November 2013. Matters were also addressed within the DCO hearing of 4 February 2014.

Siting and Layout

- 4.48 EN-1 notes, at paragraphs 4.4.1 and 4.4.2, that there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are obliged to include in the ES, as a matter of fact, information about the main alternatives they have studied, including an indication of the main reasons for the applicant's choice.
- 4.49 In following this thread, the applicant notes in the ES [APP-009], at Section 4.2, that the site is suited to the Project for various reasons, but critical is its location adjacent to CPK's existing facility. Given the commercial affiliation between C.GEN and the owners of CPK, the site allows the Project to use existing infrastructure for fuel delivery. The applicant tells us that it was not necessary to consider sites further afield.
- 4.50 Within the site's PPA, two alternative development areas were considered. Site 1A, between the shore line and the Killingholme

¹⁴ Schedule 4, Part 1 (18) and Part 2 (27)

Branch Railway, is currently part of CPK's facility and put to port related uses. Site 1B, south west of the railway, was a former naphtha and gas processing site and is now owned by C.GEN. Either Site could be served by the railway for the delivery of fuel and removal of by-products.

- 4.51 Site 1B was preferred because it achieves a desirable separation from the Humber Estuary SAC/SPA and limits the potential for the proposed generating station to affect existing or future flood defences. Part of Site 1A would be used as a construction lay down area and would carry the cooling water connections and solid fuel pipe conveyor serving off-loading barges. The ExA understands the reasons for this choice.
- 4.52 Early in the examination, the ExA expressed concern over the consequences for the appearance and maintenance of land within the site were construction phases to be delayed or abandoned. However, masterplanning requirements within the draft DCO, including Requirement 2 for a phased landscaping masterplan and a landscaping management plan to control the use and maintenance of undeveloped land, together with a scheme of monitoring, satisfactorily address this point.
- 4.53 EN-1 requires, at paragraph 4.5.4, that applicants should be able to demonstrate how the design process was conducted and how the proposed design evolved. Section 4 of the (ES and the Design and Access Statement (DAS), dated 22 March 2013 [APP-065], which formed part of the application, carry out this function.
- 4.54 EN-1 notes, at paragraph 4.5.1, that applying good design to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetics. It continues, at paragraph 4.5.3, by noting that the applicant should take into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible. It also notes, at paragraph 5.9.22, that materials and designs of buildings should always be given careful consideration.
- 4.55 The ExA considers that there need be no conflict between functionality and aesthetics. Indeed, they are integral to design in its widest sense, and consideration of their interaction from the outset is likely to give rise to the optimum solution. The layout within Site B is largely driven by the requirements of the process, site access, fuel delivery options and grid connections. The ExA recognises these constraints but is concerned that an appropriate and legible design theme emerges from within these parameters through their imaginative expression.

Conclusion on Siting and Layout

4.56 The ExA is satisfied that the application, as submitted, meets the policy requirements of EN-1 with regard to siting, efficiency and sustainability. However, one of the core planning principles of the National Planning Policy Framework (NPPF) is to always secure high quality design. Paragraph 64 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This core principle is important and relevant. How the project measures up to it is considered below.

Design

4.57 The DAS contains an explanation of the design concept and its development. As EN-1 advises, at paragraph 4.5.5, the design was the subject of a CABE review, dated 11 June 2013 [REP-078, DA03/App1]. Besides calling for a vision for the North Lincolnshire industrial coast, in summary, the CABE review includes the following points:

- It describes the scheme as appearing apologetic about its function, form and appearance while it could become an attractive and compelling piece of infrastructure that is highly efficient, accessible to the public and a tourist magnet in its own right.
- It suggests rearranging the plant equipment and ancillary facilities to connect the green spaces and to create a continuum of wildlife habitats with meaningful landscaped corridors linking the two ponds.
- The client needs to define a clear design brief to ensure that an ambitious, high quality scheme can be delivered.
- Suggests working with an artist and experienced design team to assess the potential of the scheme and to come up with some imaginative and aspirational thinking.
- Reference to images of different built examples would help illustrate the design intentions in a better way.
- Embrace the dimensions and use them in a positive way – the flare stack could become a beacon for the whole region provided that it is well designed. Bold colours and materials should be investigated too.
- During the night the Tyseley waste incinerator in Birmingham, for example, has a lighting strategy developed by an artist and it turned into a local landmark to which people respond in a positive way.
- Start the conversation about an educational facility on site. Given the extraordinary collection of activities around energy and transport it is likely that an educational facility at North Killingholme would attract a large number of visitors.

- 4.58 The ExA endorses the thrust of these points. In addition, the ExA criticised the applicant's failure to take advantage of the architectural opportunities available, the uninformative nature and lack of specificity of the indicative drawings submitted with the application, and the poor representation in visual material of existing and future built context. Further visualisation of the Project in relation to context was supplied in response to the first round of questioning [REP-077, DA/07].
- 4.59 The issue was discussed thoroughly at the Design, Layout and Visibility Hearing of 29 November 2013 [HR-045] and the applicant confirmed that C.GEN would continue to refine the Project's design principles and illustrative documentation. In response to the Hearing discussions and the second round of questioning, the applicant commissioned LDA Design to undertake supplementary architectural and design work, resulting in a further document, the Architectural Study [REP-179, DA02/01/APP1] dated January 2014, and revised indicative drawings.
- 4.60 The Architectural Study is intended to supplement the DAS and, in the event of conflict, take precedence. It sets a thematic vision for the design of the Project based on a hierarchy of areas graduated in tonal appearance from dark to light, reflecting the process from raw materials to the output of electrical energy, and distinguishing between private process areas, enclosed by an 'organising plinth' screen wall, and publicly accessible areas.
- 4.61 The theme would culminate in the public face of the building, located at the entrance to the site, with a visitors gallery allowing views into the heart of the process area. A strategy for the use of materials and colours is defined, with the object of clarifying form and massing, and identifying selected landmark elements which would assume the focus of visual attention.
- 4.62 The ExA considers that this approach could well be successful, provided the detailed design is carried through with conviction and commitment. There may be risks associated with the transfer of the design to other consultants and the possible devaluation of its importance. However, the Architectural Study and the indicative drawings identified in the recommended draft DCO form a good starting point for the serious scrutiny and control of the detailed design through the exercise of the draft requirements by the relevant planning authority (NLC).

Conclusion on Design

- 4.63 The ExA is encouraged by developments in the design approach to the Project made during the Examination. These have been secured as far as possible in recommended draft DCO Requirements 3 and 4 (Detailed design) through the primacy accorded to the Architectural Study, the revisions to the indicative drawings, and by the limits set on opportunities for subsequent

change. The design approach now accords with the aims of NPS EN-1 and the ExA is content that a satisfactory design is likely to emerge. Under the NSIPS consenting process it cannot be entirely clear that the opportunities available for improving the character and quality of the area, as required by the NPPF, will be fully taken. However, any shortcomings cannot be foreseen at this stage and are unlikely to be so severe as to weigh critically against the benefits of the Project.

Visibility

Landscape Character

- 4.64 The applicant has carried out a landscape and visual assessment and reported it in the ES [APP-009] at Section 9, as required by paragraph 5.9.5 of EN-1. In the LIR [REP-060], at paragraph 5.1.2, NLC states that the assessment can be relied upon as a reasoned explanation of the potential impacts of the proposed development. It notes, at paragraph 5.4.1, that it is unlikely that there will be any significant adverse or positive impacts arising from the proposal upon landscape character and visual amenity.
- 4.65 However, it also tells us, at paragraph 5.2.2, that there is a need to carefully consider the landscaping of the site and any potential there may be within the wider landscape to further mitigate impacts through landscape planting and through the design, siting and external appearance of the buildings proposed.
- 4.66 The ExA agrees with NLC that the Landscape and Visual Impact Assessment parameters, including the extent of the study area of 15 kilometre (km) radius, are appropriate. There are no national landscape designations within the study area, the nearest being the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB) some 30 km to the south of the PPA, well out of range of the Project's visual influence.
- 4.67 In terms of local designations, the Wold Villages Scarp Slope Area of High Landscape Value lies some 10 km to the west of the PPA. A proposed Area of High Landscape Value, areas of Woodland at Kirmington, lies some 9 km to the south west. Although views are theoretically possible from these areas, the proposed development would be largely screened by intervening landform and vegetation, as Photomontage VP12 [APP-050, Figures 9.11-9.23] illustrates, and any visibility would depend on atmospheric conditions. Where glimpsed, only the distant upper part of the taller elements of the development would be seen, in the context of similar tall features of the existing power stations and oil refineries. Little or no harm would arise.
- 4.68 National and local landscape character assessments are described in the ES, from paragraph 9.4.13 onwards. Notable is the intense industrial landscape of the Humber bank, including the site and

the area southwards towards Immingham, with its high capacity for change without critical effect on character; open, undulating farmland with blocks of woodland to the west of the site; and flat open farmland to the north, stretching from the shoreline.

- 4.69 The ES notes that the North Lincolnshire Landscape Character Assessment and Guidelines (NLLCAG) Wooded Farmland - East Halton, North Killingholme Character Area lies 1 km to the west of the site at its closest. It describes the area as flat to gently undulating landscape where the influence of historic villages is still apparent through traditional landscape elements and the absence of intensive farming. It tells us that key elements include tightly nucleated villages with architectural styles creating attractive street scenes with church steeples as prominent features.
- 4.70 However, the ExA notes that potential views towards the PPA from within both villages are largely screened by buildings, visibility being restricted mainly to properties and public locations on the outer edges of villages. Here, and in the open areas between settlements, such as those crossed by the network of public footpaths to the west of the PPA, the Project would introduce new large scale industrial buildings in close proximity to relatively tranquil arable farmland and small villages. However, this must be seen within the context of extensive accompanying development of a like kind within the NLLCAG Industrial landscape - South Humber Bank Character Area.
- 4.71 Similar considerations would apply to the remaining Character Areas in the vicinity of the site, the effects diminishing with distance¹⁵. In some instances intervening woodland and hedgerows would also limit the visual impact of the project, especially from the north and west. From across the Humber, the Project buildings would take their place within the general character of the industrialised south bank, with little impact.
- 4.72 The greatest effects would be during construction, with equivalent but lesser effects during decommissioning and demolition, because of the cranes and other equipment which would be present. During operation, the effects would be less, and the occasional appearance of the lit flare stack, and flumes of vapour from the hybrid cooling towers, would not have a dramatic impact given the occurrence of such events associated with existing plant.
- 4.73 The existing industrial landscape assumes the distinctive character of a dramatically lit tableau at night. Subject to control of the lighting strategies, both during construction and operation, by the relevant planning authority through draft DCO Requirements 28

¹⁵ NLLCAG Open Undulating Farmland - South Killingholme Character Area; NLLCAG Open Undulating Farmland - Barrow upon Humber, Goxhill, Thornton Curtis, Ulceby, Wooton Character Area; NLLCAG Flat Open Farmland - Barrow Haven, New Holland, Goxhill Haven Character Area.

and 29, the Project would assume its place without harm in this setting at night.

- 4.74 Mitigation of the Project's impact through proposed landscaping is largely confined to perimeter planting, with the caveat, made by the applicant in response to the ExA's question DA2/05 [REP-180], that interference with existing buried services should be avoided. The ExA is aware that the relatively small site area, and the existing infrastructure running through it, limits the extent of landscaping. However, maximum advantage should be taken of the opportunities that exist.
- 4.75 Control is available through Requirement 6 of the draft DCO which specifies approval of a detailed landscaping scheme. It also requires details of how the proposed landscaping works comply with the objectives set out in the South Humber Bank Landscape Strategy, which relates to saved North Lincolnshire Local Plan Policy LC20 (South Humber Bank Landscape Initiative).
- 4.76 No off-site planting is proposed. However, the context of similar existing and proposed development and, in particular, the masking effect of the Able Logistics Park (ALP) development of tall warehouses and lighting masts, for which planning permission has been granted, limit the scope for this treatment.
- 4.77 The Architectural Study describes proposed mitigation through the Project's design and external appearance. Of particular interest is the proposed use of materials and colour to selectively focus attention, and the organising plinth visually containing the processing heart of the plant and framing and emphasising the taller elements. As noted at paragraph 2.6.7 of EN-2, reduction of visual impacts may often involve enclosing buildings at low level as seen from surrounding external viewpoints. This makes the scale of the plant less apparent, and helps conceal the lower level, smaller scale features of the plant.

Conclusion on Landscape Character

- 4.78 Taking these effects as a whole, the fabric, character and quality of the landscape would undergo only slight harm, given the context of existing development. This would be so considered either through the impact of the Project on its own or in conjunction with the ALP, Able Marine Energy Park (AMEP) and other planned developments. Moreover, the site being previously used industrial land, the loss of landscape resource would not be harmful.

Visual Impact

- 4.79 Material visual impact, as distinct from impact on the character of the landscape, would be confined to relatively close public viewpoints, both during construction and operation. These would include views from the footpath network to the west of the site.

Photomontage VP 1 (Footpath 74 running from Manor Farm) and VP 7 (Footpath 77 running from East Halton) help illustrate the effects [APP-050, Figures 9.11-9.23].

- 4.80 The Project buildings would appear within the context of extensive existing industrial development and this would increase substantially with the implementation of the ALP and AMEP projects. Moreover, the ALP buildings would mask the Project buildings to a large extent seen from the north and west [HR-068].
- 4.81 As one moves along the footpaths towards the PPA, perimeter planting and the organising plinth enclosing the process area would mitigate the visual effects of the lower parts of the Project buildings. During construction, temporary fencing and hoarding would perform a similar function. Moreover, those walking the footpaths would be well aware that they do so adjacent to a heavily industrialised area and may even have chosen their route to experience its visual character.
- 4.82 Users of Public Footpath 50, along the Humber bank, already experience shoreline industrial development, and this will increase substantially with the implementation of the ALP and AMEP developments. The taller elements of the Project buildings would introduce an additional backdrop to the west of the railway line, and the cooling water connection and barge unloading facilities would be seen, but the main concern would be treatment of the pipe conveyor passing over the footpath. This should be carefully considered by the applicant in developing the detailed design, control of the quality of which is the responsibility of the relevant planning authority under Requirement 3 of the ExA's recommended DCO (Appendix E). With appropriate treatment, it could have the potential to enhance the walker's experience.
- 4.83 There is normally no right to a private view in planning law or practice. Whilst views from those properties to the east of East Halton Road, including The Willows Farm and Manor Farm, might be affected, the presence of the Project would not be overbearing, and therefore would not harm the living conditions of their occupants.

Conclusion on Visual Impact

- 4.84 Overall, the Project would have a substantial visual impact seen from close to the site. However, the effect would be within an existing and developing heavily industrialised setting. It need not be harmful if consideration is given to enhancement of the Project's visual qualities and to appropriate mitigation.
- 4.85 Control of these aspects would be the responsibility of the relevant planning authority through recommended draft DCO Requirements 3 and 4 (Detailed design); 6 (Provision of landscaping); 9 (Fencing

and other means of site perimeter enclosure); and 28 and 29 (Lighting schemes). Considered cumulatively with the ALP and AMEP developments, the presence of the Project buildings would not be critical.

Overall Conclusions

- 4.86 Following the ExA's addition of Requirements related to the control of design and appropriate mitigation, the Project generally accords with policy in EN-1 and EN-2, with relevant aspects of the NPPF, and with local policy with respect to design, layout and visibility.

ENVIRONMENTAL MATTERS

Combined Heat and Power

- 4.87 Paragraph 4.6.6 of NPS EN-1 states:

Under guidelines issued by DECC (then DTI) in 2006¹⁶, any application to develop a thermal generating station under Section 36 of the Electricity Act 1989 must either include CHP or contain evidence that the possibilities for CHP have been fully explored to inform the IPC's consideration of the application. This should be through an audit trail of dialogue between the applicant and prospective customers. The same principle applies to any thermal power station which is the subject of an application for development consent under the Planning Act 2008. The IPC should have regard to DECC's guidance, or any successor to it, when considering the CHP aspects of applications for thermal generating stations.

- 4.88 Combined Heat and Power (CHP) opportunities and their assessment are described in the ES [APP-009] in Sections 5.6.6-5.6.10 and in a separate CHP Assessment [APP-067] that accompanied the application. It was concluded that at this time, there were no identified feasible CHP opportunities.
- 4.89 The adequacy of the CHP provision was highlighted in the initial identification of principal issues [DEC-004].
- 4.90 The ExA addressed the adequacy of the information provided in the ES and the CHP Assessment in the first round of written questions [DEC-005] (Question to applicant, OP22) and in their questions to the applicant at the EIA issue specific hearing [HR-013].
- 4.91 The applicant's response can be found at [REP-113].

¹⁶ Guidance on background information to accompany notifications under Section 14(1) of the Energy Act 1976 and applications under Section 36 of the Electricity Act 1989.

- 4.92 The Environment Agency (EA) in their SoCG [REP-054] with the applicant at paragraph 4.1 state:

It is agreed that this [CHP] can be secured by a proposed requirement in the DCO. It is agreed that this approach is acceptable and is compliant with NPS EN-1.

- 4.93 The provision of a CHP facility within Work No.1 is covered by Requirement 26 in the draft DCO [APP-114].

Conclusion on Combined Heat and Power

- 4.94 The ExA considers that CHP issues have been addressed adequately by the applicant and meet the requirements of NPS EN-1 and EN-2.

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

- 4.95 NPS EN-1 paragraphs 4.7.5 and 4.7.6 state:

All commercial scale fossil fuelled generating stations have to be carbon capture ready (see CCR Section below). In addition to satisfying the CCR criteria, to reduce CO₂ emissions new coal-fired generating stations, or significant extensions to existing stations, in England or Wales must have CCS on at least 300 MW net of the proposed generating capacity and secure arrangements for the transport and permanent storage of carbon dioxide. Coal-fired generating stations of less than 300 MW net capacity should show that the proposed generating station will be able to capture CO₂ from their full capacity. Operators of fossil fuel generating stations will also be required to comply with any Emission Performance Standards (EPS) that might be applicable, but this is not part of the consents process.

Given this requirement to fit a technology which is at a relatively early stage of development, and therefore very costly, it is unlikely that any coal-fired plants will be built in the foreseeable future without financial support for CCS demonstration. However it is possible that developers may wish to submit applications in advance of securing funding. Any decision on a planning application for a new coal-fired generating station should be made independently of any decision on allocation of funding for CCS demonstration. This may mean, therefore, that planning consent could be given to more applications than will be able to secure financial support for CCS demonstration.

- 4.96 NPS EN-2 paragraph 2.3.5 states:

The IPC should impose requirements on any consent, requiring operators to:

- *retain control over sufficient additional space (whether on or near the site) for the carbon capture equipment;*
 - *retain their ability to build carbon capture equipment on this space (whether on or near the site) in the future; and*
 - *submit update reports on the technical aspects of its CCR status to the Secretary of State for Energy and Climate Change. These reports should be required within three months of the date on which a consented station first begins to supply electricity to the grid and every two years thereafter until the plant moves to retrofit CCS*
- 4.97 Carbon Capture Storage (CCS)/Carbon Capture Readiness (CCR) opportunities and their assessment are described in the ES [APP-009] in Sections 5.6.2- 5.6.5 and in a separate CCR Feasibility Study/CCS Design Concept Report [APP-066] that accompanied the application. The report concluded that the project complies with requirements of the CCR Guidance and CCS Guidance.
- 4.98 Section 9 [APP-066] presents the results of the economic assessment for conversion of a Combined Cycle Gas Turbine (CCGT) power plant to an Integrated Gasification Combined Cycle (IGCC) power plant with CO₂ capture. For purposes of confidentiality, the economic assessment was based on generic, modelled and / or quoted cost information.
- 4.99 The adequacy of the CCS/CCR provision was highlighted in the initial identification of principal issues [DEC-004]
- 4.100 The EA in their responses [REP-062] to first round question OP13 [REP-113] and second round question Op2/03 [REP-210] state:
- The applicant needs to provide additional information outlined in the Examining Authority's question Op2/01 before we can determine whether there are no foreseeable barriers to CCP technical retrofit.*
- 4.101 The applicant responded to this with an appendix Op2/01/APP1 [REP-210] in response to second round questions [DEC-010].
- 4.102 In the summary of the EA oral representations at the DCO issue specific hearing on the 4 February 2014 [HR-102] the EA stated in response to Agenda Item 23:
- We are broadly satisfied with the space arrangements for this [CCS].*
- 4.103 There is an agreed (SoCG [REP-054] paragraph 5.1) Requirement 36 in the draft DCO [APP-114] requiring an environmental permit for Work No. 2a which will incorporate conditions relating to the operational licence for the CCS chain.

- 4.104 Requirements 34 and 35 respectively in the draft DCO [APP-114] require the applicant:
- To retain control over sufficient additional space (whether on or near the site) for the carbon capture equipment; and
 - To submit update reports on the technical aspects of its CCR status to the Secretary of State for Energy and Climate Change.
- 4.105 The Applicant's economic assessment results ([APP-066] presented in Table 9.8 and Insert 9.1) show that a cost of between £60/tonne and £70/tonne of CO₂ emitted would be required in order for the conversion to an IGCC power plant with CO₂ capture to be equally attractive as the continued operation of a CCGT power plant for the remainder of the power plant's lifespan.
- 4.106 However, this range could only be achieved for a remaining lifespan of above or equal to 20 years. For a remaining lifespan of less than 20 years, the required cost per tonne of CO₂ emitted rises exponentially. No evidence was presented during the examination which challenged this economic assessment.

Conclusion on CCS and CCR

- 4.107 EN-2 para 2.3.5 requires operators to:
- retain control over sufficient additional space (whether on or near the site) for the carbon capture equipment; this is secured through Requirement 34 [APP-114];
 - retain their ability to build carbon capture equipment on this space (whether on or near the site) in the future; this is secured through Requirement 36 (b [APP-114]) and;
 - submit update reports on the technical aspects of its CCR status to the Secretary of State for Energy and Climate Change. These reports should be required within three months of the date on which a consented station first begins to supply electricity to the grid and every two years thereafter until the plant moves to retrofit CCS. This is secured through Requirement 35 [APP-114]
- 4.108 EN-2 para 2.3.7 requires applicants to provide evidence to show:
- of technically feasible plans for a CO₂ capture unit that meets the minimum size requirements;
 - an Environmental Impact Assessment (EIA) that addresses impacts arising from the capture plant; and
 - documentation to ensure compliance with all other existing policy including that any of the plant's capacity which is not to be fitted with CCS at the outset is carbon capture ready.

- 4.109 The ExA believes that adequate evidence to show compliance with the requirements of paragraph 2.3.7 of EN-2 are provided in the applicants documents [APP-009] and [APP-066].
- 4.110 EN-2 para 2.3.10 requires the inclusion in any development consent for a coal-fired generating station conditions that before construction can commence the applicant should provide:
- evidence that all necessary consents, licences and permits are in place for construction of the CCS chain, including consents for any onshore and offshore pipelines used to transport CO₂;
 - evidence that a CO₂ storage licence for the intended storage site is in place; and
 - evidence that an Environmental Permit (EP) from the EA which incorporates conditions around the operation of the CCS chain is in place.
- 4.111 The application process for the CCS chain and CO₂ storage licence has yet to commence [APP-057].
- 4.112 The Environmental Permit application to EA, was duly made on the 10 March 2014 [REP-296] one day before the examination closed. The EA were unable to offer any comments on a likely decision at this stage prior to determination, or on timescales for reaching one. Section 2.10 of the SoCG [REP-233] states there is no reason why the proposed development cannot be adequately regulated under the pollution control framework.
- 4.113 The ExA concludes that there is no evidence presented, that the granting of any necessary licence under other regulatory regimes will be withheld, and that therefore based on NPS EN-1 paragraph 4.10.8, the Secretary of State as decision-maker should have no reason to withhold development consent on these grounds.
- 4.114 The ExA believes that CCS/CCR issues have been assessed adequately, and Requirements 34, 35 and 36 in the draft DCO [APP-114] for:
- managing space arrangements;
 - monitoring update reports and
 - ensuring capture equipment is installed on site.

are robust and sufficient. The ExA believes that the requirements of NPS EN-1 and EN-2 have been adequately addressed.

Grid Connection

- 4.115 The power station will require an electrical grid connection to export electricity to the national grid via a dedicated underground high voltage cable to South Killingholme National Grid substation.

- 4.116 The implications of the applicant's strategy to make a separate application for the Grid Connection under legislation other than the Planning Act 2008 is explored in detail in Section 6, below.

Air Quality and Emissions

- 4.117 NPS EN-2 states in paragraph 2.5.6:

In considering whether to grant consent, the IPC should take account of likely environmental impacts resulting from air emissions and that in the case of SO_x, NO_x or particulates in particular, it follows the advice in EN-1 on interaction with the EA's regulatory processes.

- 4.118 The assessment of potential air quality impacts was highlighted in the identification of principal issues [DEC-005]
- 4.119 The ExA addressed the adequacy of the information and the assessment provided in the ES in the first and second round of written questions [DEC-005; DEC010] and in their questions to the applicant at the EIA issue specific hearing [HR-013]. The applicant's responses can be found at [REP-089; REP-185].
- 4.120 In the case of the Project, air quality and emissions that have been considered are detailed in Section 6 of the ES [APP-009]. The AQS Regulations 2010, specify a series of standards and objectives for air quality in the UK. The objectives are summarised in Table 6.2 [APP-009] and consider pollutants that are the principal products of industrial combustion processes. These are the basis for the assessment of emissions for the operation phase (Scenarios B, D and E). Impacts are assessed to be insignificant.
- 4.121 The EA have not raised any concerns with the applicant's assessment of the impacts of air emissions as being insignificant. In paragraph 2.10 of the EA SoCG [REP-054] it states:

The Environment Agency is satisfied that the Project should be capable of being adequately regulated under the pollution control framework.

Conclusion on Air Quality and Emissions

- 4.122 The EA has not disagreed with the applicant's assessment of the impact of air emissions as being insignificant. The ExA considers that the examination of air quality and emissions has been addressed adequately and that the requirements of NPS EN-1 and EN-2 are met together with the objectives of AQS Regulations 2010.

BIODIVERSITY AND GEOLOGICAL CONSERVATION

4.123 Issues relating to Habitats Regulations Assessment (HRA) (NPS EN-1 Para. 4.3) are covered in Section 5, Conclusions Relating to Habitats Assessment, below.

4.124 NPS EN-1 5.3.7 and 5.3.8 state:

As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives (as set out in Section 4.4 above); where significant harm cannot be avoided, then appropriate compensation measures should be sought.

In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.

4.125 No geological conservation interests were identified in the course of the examination.

4.126 The applicant provided information on the baseline ecology and biodiversity and its assessment of these issues in Section 7 of the ES [APP-009] and in Volume II of the ES appendices 7.1 -7.11 [APP-012 to APP-021].

4.127 The assessment of potential ecological and biodiversity impacts was highlighted in the identification of principal issues [DEC-005].

4.128 NE raised specific concerns on ecology and biodiversity in their relevant representations [RR-027] and in written representations [REP-020 to REP-022]. Their concerns regarding the habitats issues are dealt with in Section 5.

4.129 The specific concerns were:

- Air quality and effects on the environment via in-combination effects;
- Impacts on bats and the need for an EPS licence;
- Impacts on water voles and
- Humber estuary and North Killingholme Haven Pits (NKHP) SSSIs and Section 28 of the Wildlife and Countryside Act 1981 (WCA).

4.130 NLC addressed ecology and biodiversity issues in their LIR [REP-060] in chapter 13. At paragraph 13.2.2 it states:

In particular, I have focused on the advice dealing with bats, badgers, water voles, nesting birds, plants and invertebrates. I have looked at the submitted Environmental Statement and

appendices in detail, and am content with the range of protected and priority species targeted by survey work. I am also happy with the survey effort deployed.

4.131 The ExA investigated the adequacy of the information and the assessment provided in the ES in the first [DEC-005] and second [DEC-010] round of written questions and in its questions to the applicant at the habitats issue specific hearings [HR-037-039] [HR-094-095].

4.132 The applicant's responses can be found at [REP-098; REP-200].

Air quality and effects on the environment via in-combination effects

4.133 NE confirmed in the SoCG [REP-234] at paragraphs 7.12.1 and 7.12.2 that:

It is satisfied on the information provided that the project will not be likely to result in any significant air quality impacts on any designated sites when impacts are considered in isolation.

...NE is therefore satisfied that its initial concerns about the possibility of in-combination effects have been addressed.

Conclusion Air quality and effects on the environment via in-combination effects

4.134 The ExA is satisfied that NE concerns regarding air quality are dealt with adequately by the applicant.

Impacts on Bats and Water Voles

4.135 NE confirmed in the SoCG [REP-234] at paragraph 9.6.1:

NE agrees that any potential impacts [on bats and water voles] have been adequately assessed, and addressed where necessary.

4.136 Requirements 30 and 31 in the draft DCO [APP-114] have been agreed with NE to address bat and water vole mitigation respectively.

Conclusion on Impacts on Bats and Water Voles

4.137 The ExA considers that water vole and bat mitigation have been dealt with adequately.

Bats and the Need for an EPS Licence

4.138 NE confirmed in the SoCG [REP-234] at paragraph 10.10.1, that the ultimate decision as to whether an EPS licence for bats is required lies with the applicant. However, it does not believe that

the applicant's current survey information is adequate to inform a decision as to whether an EPS licence is required.

- 4.139 The ExA is mindful of NE's concerns regarding the adequacy of the Applicant's current survey information and its ability to inform a decision as to whether an EPS licence is required. The Applicant in their response to a second round question Ha2/38 [DEC-010] stated:

C.GEN's position remains that it is not necessary to apply for a European Protected Species ("EPS") Licence. Indeed, it is considered unlikely that Natural England would grant a licence due to the evidence gathered through the surveys (which conformed to best practice), which does not indicate that any of the features to be demolished constitute a roost or resting place. Natural England does not provide EPS licences on a precautionary basis.

- 4.140 The applicant stated again on the 11 March 2014 [REP-298] that:

...that it is no longer necessary for consents to be obtained for a European Protected Species licence.

Conclusion on Bats and the Need for an EPS Licence

- 4.141 The ultimate decision as to whether an EPS licence for bats is required lies with the applicant. The applicant has clearly stated [REP-200] that it does not believe these are necessary. The ExA has no evidence to contradict the applicant's assertion and has no reason to consider that the development (if the development consent is granted) would be likely to offend Article 12 (1) of the Habitats Directive. What is more (in view of the criminal sanction) it is for the applicant to ensure that any necessary licences are obtained before work commences.
- 4.142 However, because of NE concerns that the applicant's current survey information is not adequate to inform a decision as to whether an EPS licence is required, the ExA recommends amending Requirement 30 of the draft DCO [APP-114] to prohibit demolition before approval by NE of a survey strategy to inform such a decision (see paragraphs 7.93 to 7.96 below).

Overall Conclusions on Biodiversity and Geological Conservation

- 4.143 Subject to the points made in paragraphs 4.134, 4.137, 4.141 and 4.142 above and Section 5 below, the ExA considers that ecology and biodiversity has been adequately assessed, and that the requirements of NPS EN-1 are met. NE concerns regarding NKHPs Site of Special Scientific Interest (SSSI) are addressed in Section 5.

Biomass

4.144 NPS EN-2 paragraph 1.8.2 states:

...biomass co-firing can be used in fossil fuel generating stations.

4.145 The applicant provided details of biomass (co-firing) in Sections 1, 3 and 4 of the ES [APP-009]. When operating as an IGCC plant (scenario E3) the Generating Station would be fuelled by coal (principally), possibly blended with petroleum coke (petcoke) or biomass or torrefied biomass from which syngas will be produced to fuel the generating station.

4.146 The ExA addressed the adequacy of the information and the assessment provided in the ES in the first round of written questions [DEC-005] and in their questions to the applicant at the EIA issue specific hearing [HR-013].

4.147 The applicant's responses can be found at [REP-089]. Requirement 40 in the draft DCO [APP-114] requires all biomass material to comply with mandatory sustainability criteria.

Conclusion on Biomass

4.148 The ExA considers that use of biomass as a co-firing fuel has been adequately assessed, and that the requirements of NPS EN-2 are met.

Civil and Military Aviation and Defence interests

4.149 NPS EN-1 paragraph 5.4.16 states:

There are statutory requirements concerning lighting to tall structures¹⁷. Where lighting is requested on structures that goes beyond statutory requirements by any of the relevant aviation and defence consultees, the IPC should satisfy itself of the necessity of such lighting taking into account the case put forward by the consultees. The effect of such lighting on the landscape and ecology may be a relevant consideration.

4.150 The applicant has addressed civil aviation issues in Section 9 of the ES [APP-009]. It is assessed as not being a significant issue for landscape or ecology.

4.151 At approximately 140m AOD high [APP-009], there will be a requirement for the flare stack to be promulgated and charted for civil aviation purposes. This is achieved through the developer providing, when construction time frames are known, related information to the Defence Geographic Centre, which manages the

¹⁷ Articles 219 and 220. Air Navigation Order 2009

UK data-base of tall structures [RR-001]. This is addressed in the draft DCO [APP-114] by Requirement 45.

Conclusion on Military Aviation and Defence interests

- 4.152 The ExA considers that civil and military aviation interests have been adequately assessed and meet the requirements of NPS EN-1.

Climate change mitigation and adaption

- 4.153 NPS EN-1 states in paragraphs 4.8.1 and 4.8.8:

Part 2 of this NPS covers the Government's energy and climate change strategy, including policies for mitigating climate change. This part of the NPS sets out how applicants and the IPC should take the effects of climate change into account when developing and consenting infrastructure. While climate change mitigation is essential to minimise the most dangerous impacts of climate change, previous global greenhouse gas emissions have already committed us to some degree of continued climate change for at least the next 30 years. If new energy infrastructure is not sufficiently resilient against the possible impacts of climate change, it will not be able to satisfy the energy needs as outlined in Part 3 of this NPS.

The IPC should be satisfied that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections, taking account of the latest credible scientific evidence on, for example, sea level rise (for example by referring to additional maximum credible scenarios – i.e. from the Intergovernmental Panel on Climate Change or EA) and that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime.

- 4.154 NPS EN-2 in paragraph 2.3.13 states:

Part 2 of EN-1 covers the Government's energy and climate change strategy, including policies for mitigating climate change. Section 4.8 of EN-1 sets out generic considerations that applicants and the IPC should take into account to help ensure that fossil fuel generating infrastructure is resilient to climate change. As fossil fuel generating stations are likely to be proposed for coastal or estuarine sites and climate change is likely, for example, to increase risks from flooding or rising sea levels, applicants should in particular set out how the proposal would be resilient to:

- *coastal changes and increased risk from storm surge;*

- *effects of higher temperatures, including higher temperatures of cooling water; and*
- *increased risk of drought leading to a lack of available cooling water.*

4.155 The ExA addressed the adequacy of the information and the assessment provided in the ES [APP-009] in the first round of written questions [DEC-005 Question EIA03] and in their questions to the applicant at the EIA issue specific hearing [HR-013].

4.156 The applicant's response can be found at [REP-089]:

- Coastal changes and increased risk from storm surge

A separate Flood Risk Assessment (FRA) [APP-055] was undertaken as part of the Application. The FRA considered both tidal and fluvial flooding, including the effects of coastal changes and increased risk from storm surge, (at Sections 3.4 and 3.6 respectively). The FRA recommended a variety of flood mitigation measures that have been agreed with the EA [REP-233] regarding recommended floor levels for the protection of critical infrastructure within the Project (see paras. 4.174 to 4.186 below).

- Effects of higher temperatures, including higher temperatures of cooling water

Whilst it is not possible to mitigate the effects of these higher temperatures, there are no current forecasts of temperature rises over the proposed operational life of the Project that would prevent the Project from operating.

- Increased risk of drought leading to a lack of available cooling water

The Applicant considers it is extremely unlikely that in such a coastal location there will be so little water that a drought situation will occur.

Conclusion on climate change mitigation and adaption

4.157 The ExA has had no evidence presented in the examination that challenged the above conclusions. The ExA consider that climate change mitigation and adaptation issues have been adequately assessed by the Applicant and meet the requirements of NPS EN-1 and EN-2.

Coastal change

4.158 The PINS Scoping Opinion [PD-002] did not scope coastal change into the EIA as it is not a likely significant effect (LSE), therefore it

was not addressed in the ES [APP-009] (apart from a brief mention at paragraph 13.2.9).

- 4.159 The proposed development, apart from the cooling water infrastructure (Works 3a), is terrestrial. DML Condition 25 requires that the detailed design of Works 3a need to be approved by the Marine Management Organisation (MMO) before works may commence [APP-114]. No coastal morphology issues have been raised by the MMO or EA in relation to the Deemed Marine Licence (DML).

Conclusion on coastal change

- 4.160 The ExA considers coastal change issues to be not significant in relation to the application.

Dust and other potential nuisance

- 4.161 Paragraph 4.14.2 of EN-1 states:

It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under Section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent. (See Section 5.6 on Dust, odour, artificial light etc. and Section 5.11 on Noise and vibration.)

EN-1 5.6.7 states:

The IPC should satisfy itself that:

- *an assessment of the potential for artificial light, dust, odour, smoke, steam and insect infestation to have a detrimental impact on amenity has been carried out; and*
- *that all reasonable steps have been taken, and will be taken, to minimise any such detrimental impacts*

- 4.162 Odour, smoke, steam and insect infestation were not raised by any party in the course of the examination as potential impacts.

- 4.163 NLC in their LIR [REP-060] Chapters 11 and 15 raised dust, noise and artificial lighting issues as potential nuisance issues.

Dust

- 4.164 Able made representations [HR-101] [REP-006] on dust nuisance issues during the examination. Dust is a significant present and future concern to Able. Able's AMEP site is used temporarily for the storage of motor vehicles for export/ import. The owners of the vehicles recently relocated to the AMEP site due to concerns that they had in relation to the dust and contaminants adversely

affecting their vehicle stock on their previous site. Able contended that the generation of dust by the Generating Station or coal in transit to the Generating Station would adversely affect Able's ability to carry on that business. In the future, it is intended that the AMEP site is a site for clean, offshore wind technology. That technology is advanced and technical with sophisticated components. Increased dust and airborne particulates could potentially jeopardise that technology.

- 4.165 Dust is dealt with in Sections 4, 6, 8, 14, 15 and 16 of the ES [APP-009] and in the CEMP [APP-011]. Dust nuisance was examined at length at the EIA hearing on the 28 November 2013 [HR-013] [HR-065] where Mr Van Doorn presented expert evidence on behalf of the applicant [HR-065].
- 4.166 The applicant in response to the second round question, TT2/10, commissioned RHDHV to carry out a dust deposition dispersion modelling for coal transport by train to the Killingholme Power Project [REP-215]. The modelling study was undertaken by dust expert, Dr. Ernest Vrins. The dust deposition from coal transport by train was modelled with the US-EPA Fugitive Dust Model, using local meteorological data. The results have been compared with the lowest reference value for visual recognition of dust on a contrasting surface. The results can be summarised as follows:
- In the case where no humidification of the coal wagons takes place prior to passing the AMEP, the maximum dust deposition near the railway will be at maximum 0.014 g/m²/y. The maximum takes place close to the railway, at the northern side of the railway (due to prevailing south westerly winds). With increase of the distance the dust deposition rapidly drops. Compared to the most sensitive reference value for evidence on visual pollution of surfaces of 0.1 g/m², this is 14% of the reference value. Compared to the existing background dust deposition levels in the Hull region between 18 – 55 g/m²/year, the contribution due to the coal transport is negligible (more than thousand times less).
 - In the case where the wagons with coal are being wetted before passing the AMEP car parking area, the emission is 98% less, causing a maximum dust deposition of 0.00028g/m²/y. Compared to the reference value for evidence on visual pollution of surfaces, this is a factor 357 lower than the reference value for visual pollution.

Conclusion on Dust

- 4.167 The ExA had no reason to dispute these fugitive dust modelling results and the detailed expert evidence to the hearing [HR-065]. The ExA believes that only negligible dust effects are expected with respect to any phase of the operations and in respect of any receptor. Furthermore, widely used and effective mitigation

measures will be deployed through mitigation measures in the draft DCO [APP-114]:

- Cork Screw Unloader;
- Closed cover conveyor belt; and
- Rail wagon design.

Noise and Vibration

4.168 Noise and vibration is addressed in paragraphs 4.235 to 4.243 below.

Artificial Light

4.169 Artificial light is dealt with in Sections 7, 8, 9 and 16 of the ES [APP-009] and in the CEMP [APP-011]. The draft DCO [APP-114] contains Requirements 28 and 29 which address artificial light mitigation during construction and operation.

Conclusion on Dust and other potential nuisance

4.170 The ExA is satisfied that the various elements of potential dust [REP-189; REP-215] and other nuisance have been considered adequately and appropriately by the applicant, and that the draft DCO [APP-114] in its draft final form contains the necessary Requirements to mitigate nuisance:

- Requirements 16, 17, 18, 19 - noise nuisance;
- Requirement 27 - dust and
- Requirements 28 and 29 - light spill.

4.171 These Requirements will need NLC to approve all mitigation and control plans before construction commences.

4.172 The defence of statutory authority for nuisance under s.158 of PLANNING ACT 2008 will be available to the applicant, subject to Article 9 in the draft DCO [APP-114], which provides a defence for noise nuisance as a consequence of construction or maintenance of the development.

4.173 The ExA believes these issues have been assessed adequately, and that the mechanisms for the management of potential impacts are robust and sufficient and meet the requirements of NPS EN-1 and EN-2.

Flood risk

4.174 Section 5.7 of NPS EN-1 is applicable.

4.175 The assessment of potential flooding was highlighted in the identification of principal issues [DEC-005].

- 4.176 NLC in their LIR [REP-060], Chapter 12, highlighted flooding issues as a potential risk.
- 4.177 In the case of the Project, flood risks that have been considered are detailed in Sections 3, 5.6 and 13 of the ES [APP-009] and also a separate FRA [APP-055] has been performed.
- 4.178 A review of the North Lincolnshire and North East Lincolnshire Strategic Flood Risk Assessment (SFRA) and EA indicative flood risk maps indicates that the Operations Area is located in an area deemed to be at high risk of flooding. This is most likely to occur following overtopping and/or breach in the existing flood defences along the tidal River Humber and could be exacerbated when the potential effects of climate change are considered [APP-055].
- 4.179 The FRA [APP-055] includes detailed examination of EA overtopping and breach scenario flood maps to interpolate the likely inundation and flood depth of such events within the life cycle of the development. These interpolation calculations have followed recognised guidance on the rates of net sea level rise and increase in wave height.
- 4.180 The site specific FRA [APP-055] has shown that the site would be at significant risk of flooding during the anticipated operational lifetime of the Project and that flooding could pose a risk to plant staff if mitigation measures are not put in place.
- 4.181 The ExA addressed the adequacy of the information and the assessment provided in the ES [APP-009] and FRA [APP-055] in the first round of written questions [DEC-005].
- 4.182 The applicant's responses can be found at [REP-091].
- 4.183 The EA have not raised any concerns with the applicant's assessment of flood risk in the SoCG [REP-233].
- 4.184 Requirement 3 (d) in the draft DCO [APP-114] on detailed design secures that all critical infrastructure, shall not be below 5.2m AOD, which was agreed by the EA as appropriate [REP-233 Section 9].
- 4.185 Requirement 44 in the draft DCO [APP-114] requires the applicant to develop a flood warning and evacuation plan to be approved by NLC prior to operations commencing.

Conclusion on flood risk

- 4.186 The ExA considers that the examination of flood risks has been addressed adequately, takes full account of the additional risk from climate change (see paragraph 4.157 above) and meets the requirements of NPS EN-1. Flood risks to the development are appropriately managed.

Hazardous substances and Safety

4.187 NPS EN-1 paragraph 4.12.1 states:

All establishments wishing to hold stocks of certain hazardous substances above a threshold need Hazardous Substances consent.

4.188 The presence of certain hazardous substances on, under or above land at or above set threshold quantities (Controlled Quantities) may require Hazardous Substances Consent (HSC) under the Planning (Hazardous Substances) Act 1990 (as amended). The applicant will, if necessary, be applying for this consent prior to operations commencing [APP-057].

4.189 The proposed development may be subject to the Control of Major Accident Hazards (COMAH) Regulations 1999 (amended 2005). These Regulations aim to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur. COMAH regulations apply throughout the life cycle of the facility, ie from the design and build stage through to decommissioning. They are enforced by the Competent Authority comprising The Health and Safety Executive (HSE) and the EA acting jointly. The applicant states that it will, if necessary, be applying for this consent prior to operations commencing [APP-057].

Conclusion on hazardous substances and safety

4.190 The ExA believes these issues have been assessed adequately, and that the mechanisms for the management of potential impacts meet the requirements of NPS EN-1. The ExA consider that there is unlikely to be any impediment to obtaining HSC or complying with COMAH.

Health

4.191 EN-1 paragraph 4.13.2 states:

As described in the relevant Sections of this NPS and in the technology specific NPSs, where the proposed project has an effect on human beings, the ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate. The impacts of more than one development may affect people simultaneously, so the applicant and the IPC should consider the cumulative impact on health.

4.192 NLC in their LIR [REP-060] state at paragraph 15.1.3:

It is noted that a Health Impact Assessment has not been undertaken on the basis that one was not recommended by either North Lincolnshire CCG or Public Health England. Despite this,

overall the Section of the application relating to health is comprehensive and considers a range of impacts together with mitigation proposals.

Conclusion on Health

- 4.193 The ExA considers that the examination of Health risks [Section 17 of APP-009] has been addressed adequately and that the requirements of NPS EN-1 are met. Based on the implementation of the proposed mitigation [APP-114], for the construction, operation and decommissioning of the Project, the ExA considers there is no evidence that suggests that proposed development will result in adverse public health impacts.

THE HISTORIC ENVIRONMENT

- 4.194 An issue specific hearing on the Historic Environment was held on 29 November 2013. Matters were also addressed within the DCO hearing of 4 February 2014.
- 4.195 No listed buildings or scheduled monuments would be affected physically by the Project, although off site works carried out to install the gas and electricity connectors might disturb undesignated historic assets. The connector works are not part of the present application, except as regards CA. Permissions will be sought for their development through other legislation, and their impact on the historic environment is not addressed in this report.

Listed Buildings and Scheduled Monuments

- 4.196 In accordance with paragraph 5.8.8 of EN-1, the applicant has provided a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance. In the ExA's view, the principal listed buildings and scheduled monuments whose settings might be affected by the Project are:
- Thornton Abbey, Grade I listed and a scheduled monument.
 - The Brick and Tile Kiln, North Killingholme, Grade II listed.
 - The moated sites at Goxhill Hall; Baysgarth Farm; and Manor Farm, East Halton; all scheduled monuments.
- 4.197 The LIR [REP-060] tells us at paragraph 9.2.5 that NLC is concerned that the developer has not adequately assessed the Thornton Abbey site and how any harmful effects could be mitigated. At paragraph 7.7.7, it draws attention to the view from Thornton Abbey Station encompassing Thornton Abbey Gatehouse and the Project structures. It also notes, at paragraph 9.3.2, that no photomontage has been produced to allow the impact of the Project on the setting of the Brick and Tile Kiln to be assessed. In addition, it draws attention to the effects of the Project on the settings of the moated sites, and the possibility of screening by off-site tree planting as mitigation.

- 4.198 The SoCG between the applicant and English Heritage [REP-052] records agreement at paragraph 6.2 that the Project would not have a significant adverse effect on the setting of Thornton Abbey or any other heritage assets. It is also agreed that no mitigation measures are required and that the requirements of the NPPF have been complied with.
- 4.199 The SoCG on archaeology between the applicant and NLC identifies continuing disagreement over the effect of the Project on the setting of Thornton Abbey, as experienced from Thornton Abbey Station and from the footpath between the Station and the Abbey. NLC states, at paragraph 2.24 and Table 5, that the effect is greater than negligible and that there is an opportunity to manage the impact through off-site planting. NLC also considers, at paragraph 2.27 and Table 5, that the effect of the Project on the setting of Manor Farm, East Halton is of moderate significance and that again it could be managed by off-site planting.

Thornton Abbey

- 4.200 Thornton Abbey lies approximately 4 km to the west of the site. It was an Augustinian Monastery, continuing in use after the Dissolution to become a secular college. Various remains include the Grade I listed ruins of the Abbey Church; Abbots Lodge within the grounds, built in the 17th century and incorporating a former monastic range dating from the 13th century, listed Grade I; and other walls and structures listed Grade II.
- 4.201 Most notably, the late 14th Century Gatehouse is the best preserved in the country and strikingly impressive. Its exceptional significance is derived from its clear historical and architectural interest. The approach from the former moat to the west is flanked by high walls which direct attention to the arched opening in the Gatehouse. The areas from which this view can be experienced are an important part of its setting, strongly contributing to its significance.
- 4.202 Unfortunately, the four stacks of the EON power station lie precisely on the axis created by the approach, as if the layout of the Abbey and the Gateway opening were designed to frame them [APP-023]. This serves as a warning to take great care to avoid harmful effects on setting which may be difficult to foresee. However, sight of the Project power station would not fall on the same axis, being some way north.
- 4.203 Beyond the Gateway, within the precincts of the Abbey, the stacks of both the EON and Centrica power stations can be glimpsed between foliage on the horizon. However, in the absence of a defining visual framework, they have little impact on the Abbey's setting. The Project's main stack and flare stack would take their place in a similar low key manner, as would the proliferation of lighting masts at the ALP granted planning permission and the

wind turbines under construction at the consented AMEP which would be built and transported vertically.

- 4.204 The Gatehouse has a strong presence in the landscape, attracting attention from afar, the landscape setting contributing positively to its significance. Thornton Abbey Station, approximately 1 km to the west of the Abbey, falls broadly in line with the Gatehouse and the Project site. From the Station platform, a very public viewpoint, the Project's flare stack would be seen along with the Gatehouse. From this position, it would appear a little higher than the top of the Gatehouse.
- 4.205 Generally, the flare stack would attract little attention, its light metal structure shielded to an extent by foliage in the middle ground and by a single tree in the foreground, and its presence diminished by aerial perspective. However, when lit, although a rare occurrence, the flare stack would attract attention. It might be particularly obtrusive with the viewer positioned so that the flare appears from behind the Gatehouse.
- 4.206 It would also be seen by walkers of the footpath between the Station and the Gatehouse although its prominence would be reduced since the footpath is at a lower level than the platform. Moreover, as one progresses along the footpath the Gatehouse and associated groups of trees would assume a greater relative scale and soon mask the flare tower.
- 4.207 Paragraph 5.8.13 of EN-1 states that account should be taken of the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality.
- 4.208 Overall, the contribution of Thornton Abbey's setting to its significance would not be entirely sustained because of the harm caused by the visibility of the flare stack. Paragraph 5.8.18 of EN-1 tells us that any negative effects on the setting of a designated heritage asset should be weighed against the wider benefits of the application, and this will be done in the Summary of Conclusions below. NLC's suggestion of off-site planting might help mitigate the effect, but C.GEN are unwilling to adopt this measure arguing that the harm is negligible. Moreover, in the ExA's opinion, it would be a difficult task to arrange planting to mask the flare stack without also obscuring the Gatehouse.

The Brick and Tile Kiln

- 4.209 The Brick and Tile Kiln is located on the shore path approximately 1 km north of the proposed operations area, but much closer to the PPA. Predominantly in red brick, it comprises a series of barrel vaulted firing chambers and a rectangular tapering chimney. It is the largest surviving kiln on the Humber Banks. Its significance

springs from its historic and architectural interest as a piece of early 20th Century industrial archaeology. Because it also acts as a visual landmark on the shoreline, its setting extends as far as it can be seen in a reasonably unobstructed manner, and contributes to its significance.

- 4.210 A photomontage of the Project, seen from a position just north of the asset, was submitted to the examination [REP-206]. The kiln sits against a background of substantial mature foliage and, existing tall lighting masts can be seen above the kiln. This may well become a quite dominant feature in the background with the implementation of ALP and its floodlit logistics yards. Within this visual context, the top of the flare stack and possibly of the main stack might be glimpsed as less visually assertive features.
- 4.211 As one moves north, the chambers would quickly become obscured from view by foliage and any visual impact of the Project on the chimney would be lost. From the south, moving northwards, the chimney is obscured at present by existing industrial and landscape features up to the point where the Project would no longer be present in the same view.
- 4.212 In these circumstances, the ExA considers that no material harm would arise and the contribution of the setting of the Brick and Tile Kiln to the significance of the asset would be sustained.

Moated Sites

- 4.213 Moated sites comprise wide ditches, which would have become water filled, enclosing islands of dry ground with buildings. Their construction peaked in the late 13th and early 14th centuries. Their interest, giving rise to their significance, is archaeological and historic. Their settings encompass the wider landscape, illustrating their origins and function and contributing to their sense of place and overall significance.
- 4.214 There are a series of these sites locally, that at Goxhill Hall being a little over 4 km from the Project site. It survives well and the Hall, itself listed, is probably one of its original mediaeval buildings. The angle of view of the Project site would be very narrow and there would be substantial screening by woodland and buildings both in the near and middle distance. It is unlikely that sight of the Project's buildings would be available to any material degree, either from the moated site or Goxhill Hall. The contribution of their settings to the assets' significance would be sustained.
- 4.215 There are a line of moated sites bordering East Halton Road, approximately 1.5 km from the PPA. Baysgarth Farm moated site consists of field works with the stacks of the Centrica Power Station seen to the east, above an irregular line of mature trees, and diffusely through them in winter.

- 4.216 The flare stack and the main stack of the Project would add to this backdrop and some of its other buildings might be seen through the tree screen in winter. Having regard to the existing structures which are visible, and the relatively low sensitivity of the moated site to such impact, the ExA considers that the contribution of the setting of Baysgarth Farm moated site to the asset's significance would be sustained.
- 4.217 Manor Farm moated site is large and fairly complex. The view eastwards contains the backdrop of the two existing power stations beyond a ragged hedge and tree line. To the south east it picks up the stacks of the oil refineries. The Project's buildings would be present to the north of the existing power stations, but largely masked by the ALP warehouse buildings, which would rise above the height of the tree line, together with tall lighting masts.
- 4.218 NLC would like to see the tree line visually reinforced by the planting of further trees. However, there would seem to be little point since the ALP buildings would more effectively mask the Project's buildings. The flare stack and main stack and perhaps the tops of other Project buildings would be seen above the ALP buildings. However, given the separating distance and the visual context which would exist, the ExA considers that no material harm would arise and the contribution of the setting of Manor Farm moated site to the asset's significance would be sustained.

Conclusion on Listed Buildings and Scheduled Monuments

- 4.219 In accordance with paragraphs 5.8.14, 5.8.15 and 5.8.18 of EN-1, the less than substantial harm arising to the setting of Thornton Abbey will be weighed against the public benefit of the Project in the Summary of Conclusions below. Cumulative impact has been considered in the examination of the effect of the Project on each of the historic asset settings. The ExA considers that any harm arising to these settings would not materially exacerbate pre-existing harm, or harm arising from consented or permitted schemes.

Archaeology

- 4.220 Paragraph 5.8.9 of EN-1 states that where a development site includes heritage assets with an archaeological interest, the applicant should carry out an appropriate desk-based assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation.
- 4.221 A desk-based assessment was carried out as part of the EIA [APP-025]. Evaluation trenching has now taken place on the Project site and the results provided in the Archaeological Evaluation Report of December 2013. This is contained in Appendix 5 of the SoCG on archaeology between the applicant and NLC [REP-282]. The focus of attention is the south west part of the operations area where

trenching evidence confirms occupation of this lowland area in the Roman period and perhaps as early as the late Iron Age. Elsewhere, existing ground disturbance makes finds unlikely.

- 4.222 In the SoCG [REP-280] it is agreed that the field evaluation has been completed to a high standard. It is also agreed that there is sufficient information concerning the potential for buried archaeological remains to confirm the contents of the EIA on archaeological matters and to assist in the formulation of an archaeological mitigation strategy written scheme of investigation in accordance with paragraph 5.8.21 of EN-1.
- 4.223 The parties disagree, however, on when the mitigation strategy should be produced. NLC considers that the contents of the mitigation strategy should be agreed prior to any DCO which might be granted, and should be referred to in a requirement of the DCO. This is to ensure that all archaeological remains in the south west of the operations area are adequately recorded before the start of any ground works and that monitoring measures are in place should further remains be found across the site during ground preparation and construction.
- 4.224 The applicant considers that Requirement 13 of its final draft DCO is appropriate, which states that no part of the authorised development shall be carried out until a detailed and appropriate mitigation strategy has been approved by the planning authority. The mitigation strategy would require adequate recording of finds made during construction in the south western area, and a strategy for dealing with remains found elsewhere.

Conclusion on Archaeology

- 4.225 The difference between the approaches lies in disagreement over the possible need for further exploratory investigation before construction, rather than reliance on watching and recording during construction. These issues were explained in some detail in written questions and at hearings. In the ExA's opinion, further exploratory investigation undertaken before construction begins might be beneficial. We make suggestions in the recommended draft DCO regarding the wording of Requirement 13 (Archaeology) to allow for this in the approved mitigation strategy. However, we consider there would no advantage in delaying the DCO pending approval of the mitigation strategy.

Overall Conclusions on the Historic Environment

- 4.226 Policy on the historic environment within EN-1 has been followed by the applicant. This policy is consistent with the aims of Section 12 of the NPPF, Conserving and enhancing the historic environment, and broadly consistent with relevant saved policies in the North Lincolnshire Local Plan (2003) and the NLC Core Strategy adopted 2011. The ExA balances the harm it has

identified against public benefit in its Summary of Conclusions at paragraph 8.5 below.

LAND USE

4.227 Section 5.10 of EN-1 is relevant here.

4.228 NLC's LIR [REP-060] states at paragraph 4.5.1:

In the opinion of the local planning authority the North Killingholme Power Project proposal generally complies with Development Plan Policy and therefore the local planning authority has no objections to the proposed development on planning policy grounds.

4.229 The Local Impact Report (LIR) prepared by North Lincolnshire Council [REP-060] shows that the site of the works applied for is allocated for estuary related industrial uses in the North Lincolnshire Local Plan and states that the North Killingholme Power Project Proposal is in compliance with these policies. The ExA examined the local policy context for the Project through, inter alia, questions on the economic and social impacts including questions on NLC's adopted Supplementary Planning Document on Planning for Energy Development (see, for example, the applicant's response to question ES11 [REP-087]). This is covered in further detail in this report in the sub-section on Economic and Social, below.

4.230 Having considered the application against the Development Plan and supplementary planning policies The ExA has had no reason to disagree with the NLC conclusion that the application complies with Development Plan Policies.

4.231 Section 11.5.15-16 of the ES [APP-009] concludes that the proposed development during construction would have a beneficial impact on land use and open space of a minor positive significance.

4.232 NLC LIR [REP-060] does identify in paragraph 8.3.1 that:

The proposed power station will significantly diminish, therefore, the area's appeal as a place to enjoy recreational walking in a rural setting.

4.233 The proposed development has no implications for green infrastructure, other than its implications for footpaths 50, 71, 74, 76, 77, 84¹⁸ and 86¹⁹ which are dealt with in Sections 6 and 7 below. Section 11.5.22 of the ES [APP-009] concludes that these implications are temporary and of minor adverse significance.

¹⁸ Gas Connection [APP-094]

¹⁹ Electrical Connection [APP-096]

Conclusion on Land Use

4.234 The ExA concludes that these issues have been addressed adequately and meet the requirements of NPS EN-1. The ExA believe that the diminishment of recreational walking in a rural setting is not significant to the local population because:

- Footpath closure/diversions will be temporary and
- It was not raised as an issue by any parties during the examination hearings.

NOISE AND VIBRATION

4.235 NPS EN-1 states at paragraph 5.11.9:

The IPC should not grant development consent unless it is satisfied that the proposals will meet the following aims:

- *avoid significant adverse impacts on health and quality of life from noise;*
- *mitigate and minimise other adverse impacts on health and quality of life from noise; and*
- *where possible, contribute to improvements to health and quality of life through the effective management and control of noise.*

4.236 NLC addressed noise and vibration issues in chapter 11 of its LIR [REP-060].

4.237 Changes were made to noise limits in the draft DCO [APP-114] in the course of the examination, arising from concerns raised initially by NLC in the LIR [REP-060] and subsequently in their response [REP-064] to the ExA first round of written questions [DEC-005]. NLC was not satisfied with the noise limits proposed in Requirements 16 and 19 [APP-006]. The proposed limits were not considered appropriate for the protection of residential amenity. The reasons why the proposed noise limits are too high are detailed in Section 11.7 of the LIR [REP-060]. NLC proposed what they believed to be appropriate noise limits for Requirements 16 and 19 in Section 7.1-7.2 of the SoCG [REP-281]. On 09 October 2013 agreement was reached between NLC and the applicant to amend Requirements 16 and 19 of the draft DCO [APP-114].

4.238 NLC and the applicant agreed on Requirements 16, 17, 18, 19, 20, 21, 22, 23 and 24 in the draft DCO [APP-114], which address the mitigation and management of noise impacts on public health. Noise impacts (disturbance) on the ecological receptors at NKHP's are dealt with in Section 5 and 7 below.

- 4.239 Vibration arising from piling are addressed in Conditions 21, 22, 23 and 24 of the draft DML, Schedule 6 of the draft DCO [APP-114].
- 4.240 The mitigation and management of rail noise, construction noise at the northern and western boundaries and construction noise impacts on ecological receptors at NKHP are dealt with through Requirements 46, 47 and 49 of the draft DCO [REP-114] respectively. These are discussed in more detail in Sections 5 and 7 below.
- 4.241 NLC in its SoCG [REP-281] has agreed that construction (Section 7.2) and operation (Section 7.9) will have negligible noise impact through the mitigation measures secured in the draft DCO Requirements 16 and 19 [APP-114].
- 4.242 NLC in its SoCG [REP-281] has agreed that construction (Section 8.2) and operational (Section 8.3) vibration will have negligible impact through the mitigation measures secured in the draft DCO Requirement 24 [APP-114].

Conclusion on Noise and Vibration

- 4.243 The ExA believes that noise and vibration issues have been addressed adequately and meets the requirements specified in 5.11 of NPS EN-1.

POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES

- 4.244 Section 4.10 of EN-1 notes the need to ensure that the requirements of other consenting regimes are met. Paragraphs 4.10.7 and 4.10.8 state:

The IPC should be satisfied that development consent can be granted taking full account of environmental impacts. Working in close cooperation with EA and/or the pollution control authority, and other relevant bodies, such as the MMO, Natural England, the Countryside Council for Wales, Drainage Boards, and water and sewerage undertakers, the IPC should be satisfied, before consenting any potentially polluting developments, that:

- *the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and*
- *the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.*

The IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.

- 4.245 A list of consents required under other regulatory regimes, including environmental regulatory regimes, is provided in Appendix B [APP-057]. This shows the position for each consent required as of 22 March 2013.
- 4.246 The Environmental Permit application to EA, was duly made on the 10 March 2014 [REP-296] one day before the examination closed. The EA were unable to offer any comments on a likely decision at this stage prior to determination, or on timescales for reaching one. Section 2.10 of the SoCG there is no reason why the proposed development cannot be adequately regulated under the pollution control framework.
- 4.247 A DML is part of the draft DCO [APP-114]. This is discussed further in Section 7 below.

Conclusion on Pollution control and other environmental regulatory regimes

- 4.248 The ExA concludes that there is no evidence presented, subject to the comments in paragraph 4.246 above, that the granting of any necessary licence under other regulatory regimes will be withheld, and that therefore based on NPS EN-1 paragraph 4.10.8, the Secretary of State as decision-maker should have no reason to withhold development consent on these grounds.

SECURITY CONSIDERATIONS

- 4.249 NPS EN-1 4.15 identifies possible issues of national security relating to energy infrastructure.
- 4.250 No representations were made in regard to national security considerations.
- 4.251 The ExA do not believe there are any national security issues associated with this Application.

SOCIO-ECONOMIC IMPACTS

- 4.252 The ExA identified economic and social impacts as one of the principal issues to be examined in relation to this application. The Rule 8 letter [DEC-005] stated that these included issues related to:
- The impact on the local economy; and
 - The impact on local services and facilities

The ExA examined this through:

- Consideration of the application documents and, in particular, the Section on 'Socio-Economics' in the ES [APP-009]
- The first round of written questions (ES/01 – ES/20) [DEC-005];
- The second round of written questions (ES2/01 – ES2/03) [DEC-010]; and
- Consideration of the LIR [REP-060].

4.253 It should be noted in giving the summary of aspects covered that there were no representations or evidence presented challenging the applicant's analysis and conclusions on the socio-economic impacts of this proposal, except in respect of farming.

4.254 Following consideration of the responses to the ExA's questions and of the LIR, the ExA concluded that there was no need for an ISH devoted to Economic and Social Impacts. However, the Compulsory Acquisition hearing held on 13 February 2014, which heard evidence from Mr James and Mr Mark Fussey and on behalf of Mrs England, considered the impacts of the proposals on specific farms.

4.255 In considering responses to questions and the LIR the ExA had particular regard to Section 5.12 (Socio-Economic) of EN-1 and, in particular, whether the applicant has undertaken and included in their application an assessment of the impacts as part of the ES; whether that assessment has considered all relevant socio-economic impacts, and whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development.

Main aspects considered

In its examination of these issues, the ExA focused on the following specific aspects:

- the methodology used in the assessment of socio-economic impacts;
- the contribution of the proposal to local policies for the development of low carbon economy
- the numbers and types of jobs created in the construction and the operational phases of the proposal
- the effects of the proposal on the local labour market, including cumulative effects
- the achievement of local labour agreements
- the effects of the proposal on existing employment
- the effects of the proposal on farming
- the ability of local accommodation to accommodate workers
- the effects of associated footpath diversions on local tourism.

These aspects are summarised, briefly below.

- 4.256 In addition, aspects of the travel patterns of construction and operational staff were considered in detail in the examination of the transport and traffic aspects of this project.

The methodology used in the assessment of socio-economic impacts

- 4.257 The ExA looked at, inter alia, the rationale for the boundaries of the statistical and catchment areas used, the disaggregation of statistics down to settlement level, the robustness of statistics used and the classification of the workforce.
- 4.258 These were examined through the ExA's first round of written questions [DEC-005] and the ExA considers that our queries were addressed by the applicant's response [REP-087] in a comprehensive and acceptable manner.
- 4.259 This conclusion is supported by Para. 10.1 of North Lincolnshire's LIR [REP-060] states that:
- 4.260 The Socio-Economic Section of the statement is, in the main, thorough and robust. The methodology used to determine the impact of the project is clear and helpful, indicating levels that can easily be measured.

The contribution of the proposal to local policies for the development of low carbon economy

- 4.261 In relation to the overall relationship between the Project and local planning policy, para. 4.5.1 of North Lincolnshire's LIR [REP-060] states that:

In the opinion of the local planning authority, the North Killingholme Power Project proposal generally complies with Development Plan Policy and therefore the local planning authority has no objections to the proposed development on planning grounds.

- 4.262 More specifically, in relation to a low carbon economy, the applicant's response to the ExA's question ES11 states that the 'Investing in North Lincolnshire' website says that:

South Humber Gateway has the potential to make a significant contribution to the government's targets to secure a diverse energy supply and reduction in carbon dioxide emissions

and states that:

The introduction of a low carbon gas fired generating station such as North Killingholme will help to achieve this potential. The South Humber Gateway SPD on Planning for Renewable Energy Development prescribes that a low carbon energy scheme is a sustainable energy sources and therefore the Project complies with

this SPD.

- 4.263 Given the above, the ExA is satisfied that the local planning authority does not see a conflict between this project and its ambitions to encourage a low carbon economy.

The numbers and types of jobs created in the construction and the operational phases of the proposal

- 4.264 The applicant has estimated that, in the operational phase, the project running as an IGCC plant would create 81 skilled and 59 NVQ/unskilled jobs and running as an CCGT plant would create 22 skilled and 13 NVQ/unskilled jobs.
- 4.265 In the construction phase, the applicant set out two scenarios:
- Scenario A – Construction of Power Island and Common Facilities only; and
 - Scenario C – Construction of Power Island with the Gasification Plant and Common Facilities.
- 4.266 Section 11 of the ES [APP-009] estimates that there would be 600 jobs created under Scenario A and 1600 under Scenario B, during the construction period.
- 4.267 The ExA have not received any representations or evidence to counter these estimates and are satisfied that these are valid estimates at this point in the planning of the Project.
- 4.268 Para 15.8 of North Lincolnshire's LIR [REP-060], considering the health and well-being impacts of the proposal states that:

The socio economic benefits of the proposal are significant in terms of the employment potential.

The effects of the proposal on the local labour market, including cumulative effects

- 4.269 Section 11 of the ES submitted with the application [APP-009] shows that the local area had a rising level of unemployment with 8.5 per cent in North Lincolnshire and 12.5 per cent in North East Lincolnshire in 2011.
- 4.270 There are a number of other significant schemes proposed or permissioned in the area local to this proposal and the ExA was concerned to establish the effect that this proposal might have on the delivery of other nearby proposals.
- 4.271 In response to the ExA's question ES10 [REP-087] the applicant has stated that:

The worst case in respect of work force availability would be all six projects undergoing construction at the same time. However, even

if this was the case and all suitable personnel or skills within the study area were employed (and thus unavailable to other developments), recruitment from outside the study area (either regionally or nationally) would be able to supply sufficient workforces to enable each development to progress.

and that:

The combined employment requirements of the Project and the Reality Energy Centre are not considered to be such that all suitable personnel or skills within the study area would be employed (and thus unavailable to other developments). Recruitment from outside the study area would be possible, as required, to satisfy the operational staff requirements of both the Project and the REC.

4.272 The ExA did not receive any evidence to counter this assessment and are satisfied with its veracity.

4.273 Indeed, Para. 10.2 of North Lincolnshire's LIR [REP-060] states that:

The previous delivery of large-scale developments in the area, it is realistic that there will be a positive major impact on employment created during the construction phase of the project. The operational jobs created ... will have a minor impact on the area and should not affect the population in the area.

The achievement of local labour agreements

4.274 The final agreed s.106 agreement between the applicant and NLC [APP-113] contains a sub-Section (5) setting out the agreed details of a Local Employment Scheme.

4.275 The ExA consider that this clause provides an adequate basis for seeking to ensure the employment of local labour.

The effects of the proposal on existing employment

4.276 The ExA was particularly concerned on the immediate effect of the proposal on CPK. In its response to the ExA's question ES05 [REP-069], CPK provided an assurance that:

C. RO is not seeking specific commitments from C. GEN on this issue because it does not consider that the Development has the potential to cause direct job losses at the Property

The effects of the proposal on farming

4.277 The ExA was concerned with the effects that the proposed gas and grid connection corridors would have on farming. The operations area is largely composed of hard standing and is not farmed.

- 4.278 There were a number of representations from farmers potentially affected by the connection corridors in respect of disruption to their activities in terms of access during construction and maintenance, the effect of the underground pipes or cables, including compaction of the soil, on farming practices and crop yields and on drainage.
- 4.279 The specific effects on individual farmers subject to requests for CA are dealt with in Section 6 of this report on CA.
- 4.280 In general the applicant stated in its response to the ExA's question ES07 [REP-087] that a number of measures would be put in place to mitigate the effects on the continuation of farming on the land affected. These include placing cables or pipes at a depth of 300mm to allow for continued cropping and grazing – but not deep ploughing - and, wherever possible, seeking to ensure that the routes for the connections will follow field or natural boundaries such that potential disruption to farming operations will be minimised.
- 4.281 However, the applicant did not seek to prove that there would be no effects on, or detriment to, farming along the routes of the connection corridors and the ExA needs to consider whether the public interest for this scheme outweighs such impacts on individual farms. This is considered in Section 6 of this report (particularly, for example, paras. 6.311- 6.324), dealing with CA, as the applicant has only applied for CA, and not for works, on these corridors.

The ability of local accommodation to accommodate workers

- 4.282 The ExA were concerned to explore the evidence base for the statement in para 11.5.18 of the ES [APP-009] that should workers move to be closer to the PPA for the duration of their involvement during the construction phase, the accommodation requirements for the workforce are likely to be provided by local hotels and guesthouses, or privately.
- 4.283 In its response to question ES13 [REP-087], the applicant provided evidence from the 2012 UK Occupancy Survey to establish the basis for the above statement. This was established to the ExA's satisfaction.
- 4.284 In addition, in its response to question ES14, NLC [REP-064] stated that:

There are numerous bed and breakfast and hotel accommodation in the area that would benefit from the influx of temporary workers whilst the plant was being built. These are spread across both the North and North East Lincolnshire areas in small villages and hamlets as well as the bigger towns of Scunthorpe, Grimsby, Cleethorpes and Brigg. However, there is expected to be higher

demand for accommodation in the area due to other developments happening across the sub-region and therefore there is potential for the accommodation offer to grow to meet this demand.

- 4.285 The ExA did not receive any representations or evidence to the contrary and are satisfied that the impact on local accommodation has been properly assessed and does not create any significant deleterious effects.

The effects of associated footpath diversions on local tourism

- 4.286 In its response to question ES16 [REP-087], the applicant summarised its view on the impact in general of the scheme on local tourism:

...the Project will be seen in the context of the surrounding landscape which is already industrial/commercial in nature given the existing uses, and will become even more so given the future proposals in the area, both consented and proposed. As such, the Project will be viewed by those coming into/already using the area as one of a number of similar projects and therefore will not have any negative impact.

- 4.287 Having visited the area on accompanied and unaccompanied site visits, the ExA recognise the logic behind this statement.

- 4.288 However, the ExA were specifically concerned with the possible effects that any stopping up or diversion of local footpaths would have on tourism. Article 4 and Schedule 3 of the final draft DCO [APP-114] allow for the temporary diversion of footpaths (FP) 50, 71, 74, 76, 77, 84 and 86.

- 4.289 The applicant has stated in its response to question ES17 [REP-087] that:

The Project will temporarily interfere with some existing public footpaths during construction, but appropriate diversions will be made and access to a public footpath will be maintained throughout construction.

- 4.290 However Para. 8.3.1 of North Lincolnshire's LIR [REP-060] states that:

Despite the existing industrial encroachment within the parishes of East Halton, North Killingholme and South Killingholme, they remain predominantly rural. The proposed power station will significantly diminish, therefore, the area's appeal as a place to enjoy recreational walking in a rural setting.

- 4.291 The ExA note that the final draft DCO only gives powers (Article 11) for the temporary – rather than permanent – stopping up of streets and footpaths and, in the case of footpaths, only within the

limits of the footpath diversion zones shown in the Land Plans [APP-004, 098, 099, 100, and 101].

- 4.292 The relationship between the design of the proposed Project and the use of footpaths is covered further in the Section of this report on Design, Layout and Visibility.
- 4.293 Given the temporary nature of the diversions and the limitations placed on the re-routing of the paths secured through Article 11 this, the ExA do not consider that the temporary stopping up of footpaths will have a deleterious effect on local tourism.

Conclusions on Economic and Social Impacts

- 4.294 The ExA concludes that the applicant has had adequate regard to the socio-economic impacts of the proposal and, partly through its responses to the ExA's questions, has provided sufficient evidence to support its assertions on the impacts.
- 4.295 We conclude that the proposal will create a range of jobs both in the construction phase and, to a lesser extent, in the operational phase and that these jobs will be created in an area which is currently affected by above national average unemployment.
- 4.296 We also conclude that, subject to the mitigation of the effects of journeys to work in the construction phase dealt with in the Traffic and Transport Section of this report, the area can accommodate the influx of workers. We have not received representations on any adverse effects on the construction of other nearby proposed or permissioned projects.
- 4.297 We are reassured by the inclusion of a clause in the final s.106 agreement between the applicant and NLC [APP-113] that sets out the basis for, and operation of, a Local Employment Scheme.
- 4.298 We conclude that the effects on local tourism will not be significant and have encouraged the applicant through the examination process to include education and/or interpretation facilities to increase potential visitor numbers to the completed project.
- 4.299 Given the evidence presented, we conclude that the proposal would not have significant deleterious effects socially or economically and has the potential to support economic development in the area in line with the policies of the local authority.
- 4.300 However, the ExA has sought to balance the potential impact on local farming against the public interest involved in the CA of rights over land currently used for farming. This is dealt with in Section 6 of this report.

TRAFFIC AND TRANSPORT

- 4.301 Issue specific hearings on Traffic and Transport were held on 26 November 2013 and 6 February 2014.
- 4.302 The ExA's concerns, exercised through these hearings and written questions, focussed on two broad areas:
- The effects of road traffic to and from the site, particularly during peak construction periods; the effects of its interaction with traffic flows arising from other developments in the area; and the effects of the timing of road improvement works.
 - The effects of rail traffic transporting solid fuel and combustion by-products on the North Killingholme Branch Line to the site on other users of the line and on activities at the AMEP site.

Road Traffic

- 4.303 A SoCG was agreed with respect to transport matters between the applicant, North East Lincolnshire Council (NELC) and the Highways Agency (HA) [REP-295]. A separate SoCG was agreed between the applicant and NLC, as the Local Planning Authority and Highway Authority which included a section in similar terms on transport matters [REP-281].
- 4.304 In addition, the applicant and NLC have completed a s106 Agreement dealing, amongst other matters, with the transport contribution payable to the Council, the Travel Plan, and Heavy Goods Vehicle (HGV) access and routing [APP-113].
- 4.305 Prior to the s106 Agreement and the SoCGs, NLC's LIR [REP-060], noted at paragraph 6.1.3 that, in overall terms the proposal can, with suitable control and mitigation, be accommodated on the network without adversely affecting its performance. It then identified issues which required finalisation, including transport contributions; probable simultaneous construction of the Project and the A160/A180 upgrade; the potential need for improvements to the junction of Rosper Road and Haven Road; and travel plan commitments to reduce single car occupancy and to a detailed action plan with clear responsibilities and specific timescales.

Traffic Modelling

- 4.306 As advised in paragraph 5.13.3 of EN-1, the ES includes in Appendix 12.1 a Transport Assessment [APP-033]. At paragraph 4.3.50, the TA identifies the other developments within the local road network which might be realised at much the same time as the application proposal and therefore contribute to overall traffic congestion. These comprise the Reality Energy Centre (REC), the ALP, and the AMEP, all of which now have planning permission or development consent. The TA describes traffic characteristics of

the developments derived from their supporting environmental statements.

- 4.307 The applicant's analysis of the environmental statements indicates the following traffic patterns, with which the ExA sees no reason to disagree [APP-009, paragraphs 12.4.24 to 12.4.36; and REP-117, response to ExA question TT01(e)]. The consequences of variations from these patterns comprises part of the applicant's sensitivity study considered by the ExA from paragraph 4.311 onwards. The peak period for construction of the REC would be likely to occur before the peak of construction for the Project and, within any working day, the peak traffic flow would not coincide with that of the Project. Moreover, the operational impact of REC would be smaller than that of its constructional phase and would be expected outside the peak hours of the Project.
- 4.308 As a logistics site, the main impact of the ALP on traffic generation would be during operation. Whilst it is anticipated that the am peak hour would coincide with that of the Project, the pm peak hour would be expected to overlap only slightly.
- 4.309 AMEP's main impact would be during construction but the hours of peak traffic flow peak have been assessed as outside those of the Project. It is also unlikely that the period for construction would coincide with that of the Project.
- 4.310 The TA also sets out, in paragraphs 4.3.52 to 4.3.54 and Table 4.13, traffic improvements planned in the area. They comprise junction improvements to be delivered by ALP or AMEP with the implementation of their developments; and the upgrade of the A160/A180 (the A160/A180 Immingham Project) from single carriageway to dual carriageway, to be delivered by the HA. This is currently the subject of a separate National Infrastructure examination. The upgrade would incorporate some of the junction improvements which ALP or AMEP would otherwise be committed to delivering.
- 4.311 The operational phase of the Project would have very low trip generation rates in the peak periods. NLC does not now require any physical infrastructure improvements to be delivered by the applicant, either during the construction or the operational phase. However, it requires a Transport Contribution for the improvement of highways in the vicinity based on the NLC Interim Planning Guidance - South Humber Gateway Transport Contributions (IPG), which was formally adopted by the Council on 28 June 2011 [REP-060 Appendix 3]²⁰. This lump sum would be secured through the s106 Agreement.

²⁰ It is directly linked to Core Strategy Development Plan Document, adopted June 2011, policies CS12 (South Humber Bank Strategic Employment Site) and CS26 (Strategic Transport Infrastructure Proposals).

- 4.312 The contribution applies only to the operational phase of the development. Further, the threshold established in the IPG of 10 additional trips during the worst-case peak hour would not be reached unless Scenario E, operation as an IGCC plant, came about. The s106 Agreement is phrased such that the contribution would only become payable on commencement of commercial operation of the Project as an IGCC plant.
- 4.313 The TA analysis assumes a construction worker car occupancy rate of two, now agreed by HA, NELC and NLC in the SoCGs as a robust assumption. The TA tells us, at paragraph 4.3.55, that there are no pedestrian footways associated with highways within 2.3 km of the site to the west or 4 km of the site to the south, the only access directions, although there is a public right of way to East Halton over fields from the western corner of the PPA. Pedestrian access facilities are, therefore, very poor.
- 4.314 There are no specific cycling facilities in the vicinity and the roads, some of them narrow, carry considerable heavy goods traffic. Cycling is, therefore, not likely to be a popular option. Bus services are not extensive or frequent and the bus stop nearest the site is some 1.2 km away at East Halton, accessible via the public right of way. The nearest railway stations are some 5 or 6 km distant.
- 4.315 Of the construction scenarios, Scenario C (Construction of the Power Island along with the Gasification Plant and Common Facilities - the complete proposal in one go) would produce by far the greatest peak traffic volumes and these would be concentrated in the year 2016, peaking 24 months after the start of construction. Lesser volumes would be produced under Scenario A (Construction as a CCGT plant) focussed in the year 2016, peaking 18 months after start of construction; and Scenario D (Operation as a CCGT plant with subsequent construction of the gasification plant) concentrated in the year 2019.
- 4.316 At the request of the HA, NLC and NELC, the maximum and minimum traffic TA analysis of junctions was supplemented by an analysis based on a Core Scenario methodology, submitted to the examination in November 2013 [APP-074]. This is based on the likely peak construction periods and peak hours of traffic flow of the various developments, as far as they are known. The analysis shows that, taking account of traffic from the anticipated developments, all junctions assessed would operate within theoretical capacity provided the highway improvements were in place.
- 4.317 At the ExA's request, a sensitivity study was also conducted, [REP-214] using the Core Scenario methodology, to test the acceptability of traffic arrangements should road improvements not take place according to the assumed programme, or should surrounding developments be carried out with coincident traffic peaks, or both. Under the study, it would be assumed that were

sponsoring developments not to start as planned, and consequently improvements failed to materialise, the sponsor's construction traffic would not contribute to overall conditions.

- 4.318 The sensitivity study showed that, in 2016 with the traffic generated by the Project under Scenarios A and C at its heaviest, and with traffic from the surrounding developments occurring in their respective peak hours, certain junctions would operate satisfactorily without highway improvements. If improvements at the remaining junctions and the upgrade of the A160/A180 were not to take place, the analysis found that adverse impacts could be satisfactorily mitigated by the use of 10 minibuses to transport 186 employees, thereby reducing the overall volume of traffic.
- 4.319 The minibus services would operate via park and ride sites, management of which would be organised through SMART (Specific, Measurable, Attainable, Realistic and Timely) Measure 5 of the Travel Plan²¹. Even if the ALP traffic were included without the ALP sponsored improvements having taken place, a very unlikely scenario, the adverse impacts could be satisfactorily mitigated through the provision of 34 minibuses transporting 486 workers. It can be assumed that under Scenario D, with its peak in 2019, all the improvements would be in place and the network would operate satisfactorily.
- 4.320 The A160/A180 Immingham Project is identified as a demonstration project for early delivery in the National Infrastructure Plan 2013. This might mean that the upgrade would be in place before the occurrence of the Project's peak construction traffic flow.
- 4.321 Nevertheless, the ExA expressed concern over the potential for congestion and disruption arising from the possibility of the Project and the A160/A180 Immingham Project running in parallel. However, the contractor providing the upgrade would almost certainly be required to ensure that during peak hours no detrimental impact on existing capacity would occur. As an NSIPs application, the requirements imposed within any DCO granted for the A160/A180 Immingham Project would be subject to the control of the Secretary of State. Were such a requirement not imposed, traffic management measures through the use of minibus services would be available.
- 4.322 In the SoCGs, NLC, HA, and NELC confirmed their agreement that the Core Scenario methodology provides a robust assessment of the likely traffic conditions on the road network in 2016 and 2019, and that the effects would be acceptable. They agreed that even if the A160/A180 Immingham Project were not completed before the peak of the construction period for the application proposal, the

²¹ The applicant has produced a Park and Ride Bus Strategy Note, prepared in response to The Ex A's written question TT02/07

effects on the local road network predicted in the CORE Scenario analysis show that no specific highways interventions would be necessary. Instead, if necessary, traffic management measures would be taken as appropriate.

- 4.323 An HGV Access and Routing Strategy forms part of the s106 Agreement between the applicant and NLC, together with an HGV Access and Routing Plan, which also appears in the SoCG between the applicant, HA and NELC. The route avoids the Immingham Air Quality Management Area.
- 4.324 In the ExA's view, the issues identified in EN-1 at paragraph 5.13.11 regarding HGV traffic have been addressed. These concern control of HGV movements and their routing; HGV parking, which would not present a problem within the Operations Area; and abnormal loads and other disruptions, which need not cause difficulties given prior communication with the authorities.

Travel Plan

- 4.325 EN-1 states at paragraph 5.13.4 that, where appropriate, the applicant should prepare a travel plan including demand management measures to mitigate transport impacts. The draft Travel Plan submitted with the application [APP-033] was revised, in part to address deficiencies identified by the NLC, the HA and the NELC. The revised version, which it is agreed by those parties addresses these deficiencies, is contained within the SoCGs. It is intended as an interim framework document, leading to the development of final construction worker and operational worker travel plans. The s106 Agreement requires the Travel Plan to be submitted to and approved by the Council before implementation of the development.
- 4.326 Besides SMART Measure 5: Staff Shuttle Bus and Associated Park and Ride Measures, the Travel Plan has measures to limit car parking spaces on site to 800 to help achieve the target of 800 daily car journeys or less, and various other measures to discourage individual use of the car but encourage car sharing and use of other modes of transport. Under the Travel Plan, the measures would be required to be delivered through an experienced Travel Plan Coordinator funded by the developer. They would be required to be in place six months before the start of construction, and to be monitored by a Travel Plan Steering Group with NLC and HA members.

Representations of Able Humber Ports

- 4.327 Able raised various points regarding road traffic matters which are encapsulated in their case summary of the 6 February 2014 Hearing on Traffic and Transport [HR-120]. Able regard the assumed rate of two construction workers occupying each vehicle used in the traffic analyses as unrealistic.

- 4.328 The justification for this assumption was set out in the applicant's response to the ExA's question TT/01(d) [REP-117]. The applicant pointed out that although there is limited empirical evidence on occupancy rates, it is likely that construction workers would share temporary accommodation and travel arrangements. Moreover, the measures in the Travel Plan would encourage high occupancy rates, since site parking would be limited to 800 spaces in the context of a peak number of 1,600 construction workers. The ExA notes the confidence of HA, NLC, NELC in the occupancy rate adopted.
- 4.329 The response to Able's remaining points, concerning methods of control and the feasibility of a park and ride system working successfully, appears in the applicant's case summary to the 6 February 2014 hearing [HR-118]. They include the use of electronic passes and automatic number plate recognition to build up a data base on patterns of access. Staff would be compelled to plan their journeys in advance and would be unable to arrive in an unregistered vehicle save in exceptional circumstances. These measures would be incorporated in the Construction Worker Travel Plan secured through Requirement 2 of the draft DCO.
- 4.330 Due to lack of safe walking routes in the area it is likely that arrival at the site by foot would be prohibited, and the only means of access would be by registered car, minibus or cycle. In this case construction workers would be unable to park near the site and then walk the rest of the journey. Temporary traffic regulation orders could also be put in place in the vicinity of the site.
- 4.331 The management of the park and ride scheme would be contracted out to bus operators, who would tender to run the scheme. Responsibility for the procurement of park and ride sites might fall to the contracted bus operator or operators. Of the five potential locations suggested by the applicant, there are existing car parks at three.
- 4.332 The final locations and capacity of each site, if mitigation measures are required, would depend on factors such as the distribution of journeys to site and the starting locations of construction workers. As the peak period for construction traffic would be 18 months after construction begins, by which time the Travel Plan Coordinator would have been in post some two years, there would be adequate time to deal with issues such as securing the necessary land and permissions.

Conclusions on Road Traffic

- 4.333 In the ExA's opinion, the applicant has assessed the expected road traffic impacts of the project comprehensively and appropriately. They would be further addressed and coordinated through the Construction Traffic Management Plan, part of the masterplan to be produced under Requirement 2 of the DCO. The Travel Plan

provisions for organising construction worker and operational worker travel are detailed and realistic, as are the proposals for mitigation of adverse impacts, should they be necessary. The issues which NLC identified in the LIR as outstanding have been met. The applicant's approach to managing road traffic impacts is robust.

Rail Traffic

- 4.334 The Killingholme Branch railway runs as a single track from the Port of Immingham, northwards through the AMEP site and into the application site, terminating within the ALP site to the north. The applicant intends to construct sidings within the Project site to allow the delivery by rail of solid fuel for gasification under the IGCC project option, as one of two delivery strategies. The other would be delivery to the PPA by barge, and then by closed pipe conveyor to storage and processing in the Operational Area. Space limitations within the site would allow only trains half the standard length (half trains) to be used
- 4.335 The applicant estimates that delivery solely by rail would amount to an average of five half trains (10 each way movements) per day. Protective provisions within the AMEP DCO guarantee C.GEN up to five trains per day and prohibit unreasonable prevention of further access to the railway. On occasions, if regular deliveries are interrupted for any reason and solid fuel reserves decline, the applicant may wish to run up to sixteen half trains during 12 hours of the day on several consecutive days to replenish stocks. However, the long term average, from the point of decline to the full replenishment of stocks, would not exceed five half trains a day.
- 4.336 AMEP's processes involve moving heavy equipment across the railway within their site and they have consent to construct up to four level crossings to facilitate this movement. Able is concerned that use of the railway in excess of the guaranteed five trains per day would interfere with their ability to carry on their business. Able also expresses concerns about the inefficient use of the capacity of the line through running half trains, requiring twice as many journeys to move a set tonnage; and the extended time C.GEN's journeys would take because of necessary procedures at level crossings and elsewhere.
- 4.337 Able maintains that the target of 16 half trains in 12 hours could not be met, that congestion would be caused such that C.GEN would have a virtual monopoly on use of the line, restricting their own use of the line to transport goods through the port, and that insufficient time would be available to AMEP to use their level crossings for the necessary movement of heavy equipment.
- 4.338 The ExA notes that the EIA examined the use of five half trains a day, rather than a maximum of sixteen. However, the effects of 16

half trains a day, including those on network timetabling, were thoroughly debated at the hearings, and expert evidence heard from C.GEN and Able at the second Traffic and Transport Hearing of 6 February [HR-056, HR-072, HR-118, HR-120]. The rail infrastructure within the Port of Immingham provides the only current means of access to the Killingholme branch line. Associated British Ports (ABP) acts as infrastructure manager with overall responsibility for the allocation of paths through the port. Congestion or delays on the line could have a consequential effect on the capacity of the rail infrastructure within the port.

- 4.339 ABP notes the possibility of congestion, with competing commercial demands, but believes that five half trains servicing the C.GEN project could probably be accommodated through the Port rail infrastructure²². Where demand cannot be satisfied, the infrastructure manager is required to undertake a capacity analysis with a view to enhancing capacity.
- 4.340 In any event, unless brought from elsewhere on the rail network, through the port infrastructure, coal would be loaded onto trains at the unloading facility to the north west of the port, having arrived by sea. It is understood that ABP is developing a head shunt scheme which would allow rail traffic to access the Killingholme branch line from the loading facility without affecting rail traffic within the main port.
- 4.341 Returning to Able's specific concerns, the ExA considers these misplaced to a large extent. Amongst other reasons, this is because C.GEN would only occupy the line for a 12 hour period in every 24 hours, allowing a lengthy uninterrupted period for Able to make use of their level crossings. Within the 12 hour period of use by C.GEN, even on the rare days when sixteen half trains use the line, C.GEN calculate that there would be at least a fifteen minute period within each 45 minute cycle when the line would be unoccupied, allowing AMEP to use its level crossings. Able have provided no information on their own processes, or when they might require level crossing access, to demonstrate that these windows would be inadequate.
- 4.342 Able disputes the timings adopted by the applicant and C.GEN admits that control of the existing level crossings would require enhancement to achieve these timings. However, it is likely that enhancement would happen since approval of AMEP's proposed level crossings would require an equivalent system. If AMEP's crossings are operational then upgrade would have taken place to the existing crossings. If AMEP's crossings are not operational, they would suffer no disruption.

²² ABP's response to first round question TT13 [REP068]

- 4.343 It is pertinent to note here that Able's witness at the Issue Specific Hearing on 6 February 2014, Mr Barnard, stated that his operatives could make a scheme for sixteen half trains over a 12 hour period work.
- 4.344 If the situation arose, in the worst case, in which ABP were unable to allocate train paths to C.GEN, or if AMEP were to suffer an unreasonable amount of disruption through C.GEN's use of the branch line, C.GEN might be obliged to run less than the maximum 16 half trains that, on occasions, it might wish. In any event, C.GEN has an alternative means of delivery by barge and then by pipe conveyor.

Conclusion on Rail Traffic

- 4.345 C.GEN's projected use of the North Killingholme branch line would not be likely to cause unacceptable congestion, or impact on the activities of other users to an unreasonable extent. If it did, then investigation of ways to enhance the capacity of the line would be put in hand by ABP, C.GEN's use of the line would be restricted, or C.GEN might use its alternative means of delivery by barge and conveyor. In these circumstances, the ExA sees no reason to regard this aspect of the applicant's proposals as unacceptable. The environmental impact of C.GEN's use of the branch line is considered elsewhere in this report.

Overall Conclusions on Traffic and Transport

- 4.346 EN-1 tells us, at paragraph 5.13.7, that provided the applicant is willing to enter into planning obligations or requirements that can be imposed to mitigate transport impacts, then development consent should not be withheld, and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure. It continues at Paragraph 5.13.8 by advising that where mitigation is needed, possible demand management measures must be considered and if feasible and operationally reasonable, required, before considering requirements for the provision of new inland transport infrastructure.
- 4.347 This policy has been followed, including the completion of a s106 Agreement, whose obligations relating to the Transport Contribution, the Travel Plan, and HGV Access and Routing meet the tests set out in paragraph 204 of the NPPF. Subject to requirements set out within the recommended draft DCO, the Project meets EN-1 policy regarding traffic and transport in all other respects.
- 4.348 Moreover, it meets the aims of Section 4 of the NPPF, Promoting sustainable transport. It also meets the aims of relevant policy of the NLC Core Strategy, adopted June 2011, in particular Policy CS25 (sustainable development) and Policy CS26 (strategic transport infrastructure).

WASTE MANAGEMENT INCLUDING BIOMASS

4.349 Section 5.14 of NPS EN-1 and Section 2.9 of EN-2 is applicable.

4.350 In the case of the Project, waste management issues have been considered and are detailed in Sections 3.2 and 15.7 of the ES [APP-009] and the CEMP [APP-011].

4.351 NLC in Section 14 of the LIR [REP-060] comments on the applicants waste management plans:

Given the lack of detail about the nature and volumes of wastes that are anticipated to be produced by the project no further comment can be made at this time.

4.352 The ExA addressed the adequacy of the information and the assessment provided in the ES in the first round of written questions (EIA06 and TT09 [DEC-005] and at the EIA and Transport hearings [HR-013; HR-011].

4.353 The applicants responses can be found at [REP-089; REP-117; HR-060; HR-056].

4.354 Requirement 39 of the draft DCO [APP-114] requires a Site Waste Management Plan to be approved by NLC prior to the commencement of operation.

Conclusion on Waste Management including Biomass

4.355 The ExA considers that the issue of waste management has been addressed adequately and meets the requirements of NPS EN-1 and EN-2.

WATER QUALITY AND RESOURCES

4.356 Section 5.15 of NPS EN-1 is applicable.

4.357 In the case of the Project, water quality and resources issues have been detailed in Sections 3.6, 4.6 and 13 of the ES [APP-009] and the CEMP [APP-011]. A Water Frameworks Directive Assessment has been carried out by the applicant [REP-092].

4.358 NLC in Section 12 of the LIR [REP-060] comments on the applicants water resources plans, and is satisfied that the proposed development meets the water quality requirements under both the EU Water Directive and the Humber River Basin Management Plan (RBMP).

4.359 The ExA addressed the adequacy of the information and the assessment provided in the ES in the first round of written questions [DEC-005] and at the EIA hearing [HR-041; HR-042].

- 4.360 The applicants responses can be found at [REP-091; REP-185; HR-065].
- 4.361 EA in its SoCG [REP-233] at Sections 7 and 8 confirms that water quality and resources issues have been dealt with appropriately.
- 4.362 The ExA has no reasons to dispute the EA's finding that water quality and resources issues have been dealt with appropriately.
- 4.363 Requirements 10, 11 and 12 of the draft DCO [APP-114] put in place mechanisms to manage water quality and resources during construction and operation.

Conclusion on water quality and resources

- 4.364 The ExA considers that the water quality and resource issues have been addressed adequately and meets the requirements of NPS EN-1.

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

INTRODUCTION

5.1 Paragraph 4.31 of National Policy Statement (NPS) EN-1 states:

Prior to granting a development consent order, the IPC must, under the Habitats and Species Regulations, (which implement the relevant parts of the Habitats Directive and the Birds Directive in England and Wales) consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Further information on the requirements of the Habitats and Species Regulations can be found in a Government Circular. Applicants should also refer to Section 5.3 of this NPS on biodiversity and geological conservation. The applicant should seek the advice of Natural England and/or the Countryside Council for Wales, and provide the IPC with such information as it may reasonably require to determine whether an Appropriate Assessment is required. In the event that an Appropriate Assessment is required, the applicant must provide the IPC with such information as may reasonably be required to enable it to conduct the Appropriate Assessment. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects.

5.2 In paragraphs 4.1.3, 6.3.3 and Table 3 of the applicant's Report to inform the Habitats Regulations Assessment (HRA) [APP-058], the applicant accepts that the proposed Project:

- is a project within the terms of the Habitats Regulations;
- that it would be likely to have a significant effect on the Humber Estuary Natura 2000 network and
- that an Appropriate Assessment (AA) should be carried out.

PROJECT LOCATION

5.3 The proposed development at Killingholme in North Lincolnshire would lie on the south bank of the Humber Estuary, which is designated under European law as an important site for nature conservation and forms part of the Natura 2000 network of sites.

5.4 The inter-tidal and terrestrial portions of the Humber Estuary that would be directly and indirectly affected by the proposed Nationally Significant Infrastructure Project (NSIP) (see RIES [REP-246]) are protected by three European nature conservation designations, namely the:

- Humber Estuary SAC,

- Humber Estuary SPA and
- Humber Estuary Ramsar site²³.

5.5 These are referred to collectively as the European sites.

5.6 The Humber Estuary is also a Site of Special Scientific Interest (SSSI), covering 37,000 ha. In addition, a 21.6 ha group of coastal lagoons formed by gravel extraction which lie adjacent to the south of the main application site, bounded to the north-west by Haven Road and to the north east by the seawall, and to the west by a currently disused railway [APP-114 Schedule 1, Part 1 Work No. 5] is separately designated as the North Killingholme Haven Pits (NKHP) SSSI, notified under Section 28 of the Wildlife and Countryside Act 1981 (WCA).

5.7 At North Killingholme the seawall is the formal boundary for the European site designations with the important exception that immediately to the south-east of the application site, the boundary of the SPA and the Ramsar site extends inland to take in the NKHP SSSI.

5.8 The project is not connected with, or necessary to, the management for nature conservation of any of the European sites considered within the assessment²⁴. This conclusion has been agreed between the applicant and Natural England (NE) (Paragraph 3.1.2, Statement of Common Ground (SoCG) with NE, [REP-234]).

HRA IMPLICATIONS OF PROJECT

5.9 The potential impacts considered within the Screening (Stage 1) and Integrity (Stage 2) matrices upon the identified European sites which are considered within the applicant's HRA Report [APP-058] and the Report on the Implications for European Sites (RIES) [REP-246] are provided in the table below.

Impacts in submission information ²⁵	Presented in matrices ²⁶ as
Habitat Loss	Habitat Loss
Fragmentation (e.g. the restriction of bird movement through or across the Estuary)	Fragmentation
Increased concentrations of NOx	Air Quality Change

²³ Paragraph 3.6 of the SoCG with NE [REP-234] states that the qualifying features of the Humber Estuary SAC and SPA overlap with the interest features of the Ramsar site. The only exception is the natterjack toad, which is an interest feature of the Ramsar site alone and is not present within the Zone of Influence of the Project (approximately 30km away).

²⁴ Habitat & Species Regulations 61(10)(b) 2010 No.490

²⁵ Applicants HRA Report[APP-058]

²⁶ Appendix H RIES [REP-246]

Increased nutrient / acid deposition	
Discharge of cooling water / process effluent Changes to hydromorphology Thermal Plume	Hydrological Change
Disturbance from increased noise and vibration Disturbance form increased light Disturbance from increased movement	Disturbance
Entrainment and entrapment of fish	Mortality
In combination impacts of any of the above	In Combination Effects

5.10 A likely significant effect (LSE), has been explained by the European Court of Justice in the Waddenzee judgement²⁷ (C-127/02) as follows in paragraphs 47 and 45 respectively:

a) Significant: "Where a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on that site"; and

b) Likely: "if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site....".

5.11 A further clarification / definition of LSE is provided within Habitat Regulations Guidance Note 3, paragraph 4.1 (English Nature, 1999), where:

Likely significant effect is, in this context, any effect that may reasonably be predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects.

5.12 The applicant in its response to the RIES [REP-285] states:

²⁷ Judgment of the Court (Grand Chamber) of 7 September 2004. Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Reference for a preliminary ruling: Raad van State - Netherlands. Directive 92/43/EEC -Conservation of natural habitats and of wild flora and fauna - Concept of "plan" or "project" - Assessment of the implications of certain plans or projects for the protected site. Case C-127/02. European Court Reports 2004 page I-07405

C.GEN welcomes the comprehensive review of the evidence and representations concerning the implications for European sites presented by the Examining Authority in its RIES.

- 5.13 NE in its response to the RIES [REP-314] did not raise any issues regarding the above table, summarising the likely significant impacts on the European sites.
- 5.14 As a result of the screening assessment (Stage 1) [APP-058], the applicant concluded that there are a range of potential impacts via multiple pathways, including air, land and water, which could affect any of the qualifying features of the potentially affected Natura 2000 sites and Ramsar site.
- 5.15 Para 6.4.1 of the HRA Report [APP-058] states that:

The draft HRA Screening was presented to NE on 5th October 2012, who confirmed their agreement with the conclusions that an Appropriate Assessment is needed. Details of the consultations and comments are included in Appendix B of the HRA Report [APP-058].

- 5.16 Paragraphs 3.3 – 3.6 of the SoCG with NE [REP-234] identify the qualifying features of each European site²⁸ which are relevant to the assessment of effects on the sites:

Humber Estuary SAC;

- Sandbanks which are slightly covered by sea water all the time
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide
- *Salicornia* and other annuals colonising mud and sand
- *Glasswort* and other annuals colonising mud and sand
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- *Petromyzon marinus*; Sea lamprey and,
- *Lampetra fluviatilis*; River lamprey.

Humber Estuary SPA

- Great bittern *Botaurus stellaris* (Non-breeding)
- Great bittern *Botaurus stellaris* (Breeding)
- Common shelduck *Tadorna tadorna* (Non-breeding)
- Pied avocet *Recurvirostra avosetta* (Non-breeding)
- Pied avocet *Recurvirostra avosetta* (Breeding)
- European golden plover *Pluvialis apricaria* (Non-breeding)
- Red knot *Calidris canutus* (Non-breeding)
- Dunlin *Calidris alpina alpina* (Non-breeding)

²⁸ The SAC/SPA features are the relevant interest features of the European sites and that the relevant interest features of the Ramsar site will be covered through the assessment of the SAC and SPA.

- Ruff *Philomachus pugnax* (Non-breeding)
- Black-tailed godwit *Limosa limosa islandica* (Non-breeding)
- Bar-tailed godwit *Limosa lapponica* (Non-breeding)
- Common redshank *Tringa totanus* (Non-breeding); and,
- Waterbird assemblage (Non-breeding).

ASSESSMENT OF EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN COMBINATION

- 5.17 There is agreement between NE and the applicant on the sites (and the features of those sites, paragraph 5.16 above) that are likely to be significantly affected by the project at paragraphs 3.3, 3.4, 3.5, 3.6.1, 3.8.1 and 3.9.3 of the SoCG [REP-234].
- 5.18 There were no dissenting views from other interested parties.
- 5.19 There was agreement between the applicant and NE on the baseline evidence provided (paragraph 2.9.1[REP-234]).
- 5.20 There were no dissenting views from other interested parties.
- 5.21 There was agreement between the applicant and NE on the assessment methodology (paragraphs 2.11.5, 4.7.1, 4.18.1, 5.17.1, 7.12.1, 7.12.2, 8.12.1[REP-234]).
- 5.22 There was a dissenting view from Able. In their Relevant Representations [RR-023] they contended that :
- There is no consideration in the ES of the impact of the Generating Station on the functioning of the AMEP proposed new compensation and mitigation habitat.
 - The Generating Station could lead to a far greater significant effect and a greater material effect on Natura 2000 in-combination than the AMEP would alone.
 - The potential impacts on the NKHP SSSI caused by increased train movements have been inadequately assessed.

Impact on the functioning of AMEP compensation and mitigation habitat

- 5.23 The applicant in response to the Examining Authority's (ExA's) first round questions [DEC-005 Question HO3] provided their assessment of the Project's impact on the functioning of the Able Marine Energy Park (AMEP) proposed new compensation and mitigation habitat [REP-098; REP-104].

Conclusion on the impact on the functioning of AMEP compensation mitigation land

- 5.24 The Project's operations area is approximately 4 km from the compensatory habitat. The ExA do not believe there is any credible pathway between the source and AMEP compensation habitat. The

ExA believes that mitigation measures for the project are such, that there will be no adverse effects on Able mitigation areas.

In-combination impacts

5.25 The applicant has addressed potential in-combination impacts within the HRA Report [APP-058]. The following projects have been included in the in-combination assessment carried out by the applicant:

- Able Logistics Park, immediately north of the Project;
- URSA Glass-Wool Production facility, immediately west of the Project; and
- Able Marine Energy Park, immediately south of the Project.

5.26 Paragraph 2.11 of the SoCG with NE [REP-234] states that it is not necessary to assess the following projects since they will not have ecological interactions with the Project as they are distant from it, or they are not of a nature likely to interact:

- Heron Renewable Energy Plant, Drax
- Reality Energy Centre, Real Ventures
- A160 Highways Improvements, Highways Agency
- Hornsea Offshore Wind Farm, SMart Wind - Zone 4
- Hornsea Project One and
- Hornsea Project Two.

5.27 The locations of all of the projects listed in this Section are identified in Figure 2.1 of the ES [APP-009; APP-050]. The status of each project is described in Paragraphs 2.7.3 – 2.7.32 of the ES [APP-009]. The AMEP DCO was made by the Secretary of State on 13 January 2014²⁹

5.28 Able in its [RR-023] questioned the applicant's in-combination assessment methodology and conclusions [APP-058].

5.29 Paragraph 2.11.5 of the SoCG with NE [REP-234] states that NE does not agree with the methodology of the in-combination assessment. However, it goes on to state that:

NE agrees that subsequent analysis and appropriate mitigation has resolved any in-combination issues.

Conclusion on In-combination impacts

5.30 The ExA in its first round questions [DEC-005] and in the first habitats hearing [HR-012] addressed the adequacy of the applicant's in-combination assessment and conclusions. The ExA has no reasons to disagree with NE that the applicant's

²⁹ Currently the subject of Special Parliamentary Procedure.

subsequent analysis and mitigation measures has resolved any in-combination issues.

Overall Conclusions on the assessment of effects resulting from the project, alone and in combination

- 5.31 The ExA advises there is sufficient evidence to require the Secretary of State to conclude that significant effects cannot be excluded for some of the European site features. Therefore all of the features detailed in paragraph 5.16 above have been taken forward to Stage 2 of the HRA process (as summarised in the RIES integrity matrices [REP-246]).

CONSERVATION OBJECTIVES

- 5.32 European Site Conservation Objectives are those referred to in the Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations") and Article 6(3) of the Habitats Directive 1992. They are relevant for use when either the appropriate nature conservation body or competent authority is required to make an AA under the relevant parts of the legislation.
- 5.33 These conservation objectives are set for each designated habitat/species/ bird feature for a SAC and a SPA. Where the objectives are met, the site can be said to demonstrate a high degree of integrity and the site itself makes a full contribution to achieving the aims of the Habitats and Birds Directive for those features.
- 5.34 Paragraph 5.16 above, identifies the qualifying features of the Humber European Sites (SAC, SPA) which are relevant to the assessment of effects on integrity of the sites.
- 5.35 The Conservation Objectives [REP-022]³⁰ for Humber Estuary SPA³¹ Site Code UK9006111 are:

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;*

³⁰ www.naturalengland.org.uk

³¹ The SAC/SPA features are the relevant interest features of the European sites and that the relevant interest features of the Ramsar site will be covered through the assessment of the SAC and SPA.

- *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.*

5.36 The Conservation Objectives for the Humber Estuary SAC, Site Code: UK0030170 [REP-022]³² are:

Avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features.

Subject to natural change, to maintain or restore:

- *The extent and distribution of qualifying natural habitats and habitats of qualifying species*
- *The structure and function (including typical species) of qualifying natural habitats and habitats of qualifying species*
- *The supporting processes on which qualifying natural habitats and habitats of qualifying species rely;*
- *The populations of qualifying species; and,*
- *The distribution of qualifying species within the site*

FINDINGS IN RELATION TO EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

- 5.37 The screening exercise (Stage 1) has identified the potential for a LSE on certain features of the European sites considered. This Section summarises the anticipated effects on the integrity of the European sites, in the context of their conservation objectives.
- 5.38 The matrices in Section 4 of the RIES [REP-246] and the comments made on them by interested parties are discussed below.
- 5.39 The applicant concluded that the project will not adversely affect the integrity of the European sites detailed in Paragraph 2.2 of the RIES [REP-246] either alone or in combination with other plans/projects [APP-058] and in the revised integrity matrices submitted on 10 February 2014 [REP-235] conclude no likely adverse effects on any European sites.

³² www.naturalengland.org.uk

- 5.40 The evidence to support this conclusion was discussed during the course of the examination at two separate hearings on the 27 November 2013 [HR-012, 037, 038, 039] and the 5 February 2014 [HR-094, 095, 103], following submissions made to the ExA by the applicant, NE, Lincolnshire Wildlife Trust, Marine Management Organisation (MMO), NLC, Environment Agency (EA) and Able [REP-246].

Conclusion on the Humber SAC

- 5.41 The ExA considers that, following the ExA first [DEC-005] and second round [DEC-010] questions and agreement between the applicant and:

- MMO
 - DML Condition 20- Cooling water intake conditions and
 - DML Conditions 21 to 24 - Piling conditions [APP-114]
- EA [REP-233 Section 12.1³³] and
- NE [REP-234 Section 4],

that the conservation objectives for the Humber SAC European Site will not be affected by the project i.e. the extent of habitat or size of population of the Humber SAC European site features will not be reduced permanently or temporarily.

Humber SPA/Ramsar

- 5.42 However, the conservation objectives for the Humber SPA/Ramsar European site, namely the NKHP, the moulting black-tailed godwits, and other species (see paragraph 5.16) required further examination.
- 5.43 The Humber Estuary is of primary importance to black-tailed godwits as a post-breeding moult site, with numbers reaching a peak during the autumn, though there is also a smaller number present through the winter and spring. The large majority (an average of 85 per cent of the peak count over the last 5 years) of these birds use the NKHP as a roost over the high tide period.³⁴
- 5.44 From the first Relevant Representations it was clear that the maintenance of the integrity of the Humber Estuary SPA was predicated on measures to mitigate impacts on the qualifying features within the NKHP and in particular the black-tailed godwit.

³³ The limited nature of piling works i.e. 2-4 piles installed over 2-3 days will not have a significant effect on the SAC [REP-233].

³⁴ Mander, L. and Cutts, N. 2005. Humber Estuary Low Tide Count Programme 2003-04. English Nature Research Report No. 656.
Calbrade, N. A., C. A. Holt, G. E. Austin, H. J. Mellan, R. D. Hearn, D. A. Stroud, S. R. Wotton, and A. J. Musgrove. 2010. Waterbirds in the UK 2008/09: The Wetland Bird Survey., BTO/RSPB/JNCC in association with WWT, Thetford.

- 5.45 Lincolnshire Wildlife Trust raised concerns regarding the NKHP and the bird populations it supports, in its relevant representations [RR-018]:

Of particular concern to the Trust is the proximity of the fuel conveyor to North Killingholme Haven Pits Nature Reserve and SSSI. The pits support significant populations of SPA species such as black-tailed godwit, dunlin and redshank (97% of the SPA population of black-tailed godwit has been recorded roosting at Killingholme Haven Pits) and avocet and marsh harrier breed there. Impacts to SPA birds at North Killingholme Haven Pits are likely during construction and operation of the fuel conveyor as a result of increases in noise, light, plant operation and also pile driving resulting in further noise and vibration. Whilst we welcome the proposed piling programme to avoid the most sensitive wintering and breeding periods we remain concerned regarding the level of noise that will be generated by the non-piling construction activities and also the noise that will be generated during operation.

Also of concern with regard to North Killingholme Haven Pits is the predicted increase in train movements through the SSSI as a result of the development. The application states that ten trains³⁵ a day will pass through the SSSI. This could also lead to disturbance of SPA wintering and breeding birds from both noise and visual disturbance.

- 5.46 NE in its relevant representations stated [RR-027]:

North Killingholme Haven Pits SSSI is a significant roosting and feeding ground for waterfowl, which occur in internationally important numbers in the Humber Estuary in winter. Nationally important numbers of black-tailed godwits have visited the North Killingholme Haven Pits in increasing numbers since the late 1980's. There are also occasional visits by large flocks of roosting redshank. North Killingholme Haven Pits forms an integral part of the estuarine feeding and roosting opportunities for the internationally important populations of winter waterfowl for which the Humber Estuary SPA is notified.

- 5.47 The applicant in its early submissions [APP-009; APP-058] argued that the black-tailed godwit and other NKHP bird species would become habituated to the noise and visual disturbance associated with the Project.

- 5.48 NE in Paragraphs 6.9.7 – 6.9.9 of the SoCG [REP-234] states that:

³⁵ In the ES [APP-009] submitted in March 2013 only 5 half train deliveries per day were assessed. At the first habitats hearing [HR-065] this was amended to 16 half trains per day. The effects of this change was fully assessed by the applicant [REP-189; 237].

Whilst NE accept that there is evidence that shows some birds do habituate to some forms of disturbance and whilst we accept the possibility that moulting black-tailed godwits (the key SPA species affected by this aspect of the development) might habituate to trains movements across North Killingholme Haven Pits, they do not feel that the available evidence confirms beyond³⁶ reasonable scientific doubt that this will happen.

The Pits are included within the boundary of the SPA and, in addition to other designated interest features, support up to 100% of the Humber SPA population of black-tailed godwit during their autumn roost. There is limited evidence that if birds were displaced they would have sufficient viable alternative roost sites that meet the birds requirements during this critical period. Disturbance resulting in complete or partial abandonment of the site could have an adverse effect on the population and therefore the integrity of the SPA. Given the significance of the size and importance of the moulting population affected at this site, NE advised that a high degree of certainty is required of the evidence [HR-114].

NE consider that additional mitigation measures are required in order to reliably conclude that there will not be an adverse effect on roosting black-tailed godwits in North Killingholme Haven Pits.

Conclusion on Habituation

- 5.49 The ExA agreed with NE that there was still a reasonable scientific doubt, even with best available scientific evidence put forward by the applicant [APP-058] [REP-098 response to H18] [REP-138][REP-200], that moulting black-tailed godwits (the key SPA species affected by this aspect of the development), and other species (see paragraph 5.16) may not habituate to trains movements, with the associated noise and visual disturbance, across NKHP.
- 5.50 The ExA has reached this view because the evidence provided by the applicant was:
- Not species specific for the black-tailed godwit;
 - Not specific to the behavioural responses of significant numbers of birds at roost during their autumn moult; and
 - Not directly analogous to the site specific conditions at NKHP.

³⁶ The use of beyond is not the correct test as the ExA pointed out at the second Habitats hearing [HR-094:095].

Mitigation proposals for train movement impacts on birds at NKHP

- 5.51 The applicant sought to resolve the habituation issue by isolating and addressing the aspects of the interaction of train movements and their impact on birds at NKHP.
- 5.52 The two components of the impacts of train movements on NKHP are noise and visual disturbance. The applicant has therefore sought to determine how those impacts could be addressed via mitigation measures.
- 5.53 The applicant has proposed mitigation measures which were agreed with and accepted by NE [REP-234; REP-314] in order to maintain the integrity of the SPA at NKHP. Mitigation will be secured and delivered through the following draft DCO requirements [APP-114]:
- Requirement 14 - CEMP;
 - Requirement 24 - Piling;
 - Requirement 25 - Construction of Work Nos. 6a and 6b;
 - Requirement 46 - Train speed at NKHP;
 - Requirement 47 - Acoustic hoarding;
 - Requirement 48 - Visual attenuation of train movements;
 - Requirement 49 - Control of construction noise at NKHP.
- 5.54 The applicant has provided a table summarising the mitigation measures relied upon in the ES [APP-009 and APP-058] and demonstrated how these would be secured through the DCO [REP-197]. This table highlights the mitigation measures relevant to the European sites. At the hearing held on 5 February 2014 [HR-094-095] it was highlighted that subsequent to the submission of this document, the draft DCO [APP-114] has been revised to include additional requirements referenced within the mitigation table.
- 5.55 NE is satisfied with DCO Requirement 14 [APP-114] requiring submission of a Construction Environmental Management Plan (CEMP) [APP-011]. This is in the context where measures NE consider necessary to mitigate/avoid impacts on the European Sites are fully addressed within other relevant DCO Requirements.
- 5.56 With regards to railway noise modelling assumptions, NE has read the applicant's written summary [HR-104] of the specific hearing on habitats, ecology and nature conservation on 5 February 2014 which provides a specific discussion on acceleration, braking and the crossing at Haven Road and is satisfied with the clarification provided [APP-011].
- 5.57 The ExA has no reason to dispute the results of the applicant's rail noise modelling [HR-104].

- 5.58 Able in its summary of the issue specific hearing on habitats, ecology and nature conservation [HR-112] states at paragraph 18 that:

If it is required to do so, Able will exercise its right to prevent the visual attenuation works [in respect of landscaping planting to prevent visual disturbance of black tailed godwit on North Killingholme Haven Pits].

- 5.59 Able, in its written summary [HR-112] relating to the additional planting to be secured in Requirement 48, stated that:

If the scheme were to be implemented it would cause an additional impact on the integrity of the SSSI by providing surfaces on which raptors may alight, with a resultant impact on the wellbeing of the black-tailed godwit population within the SSSI.

- 5.60 NE advised that it is highly unlikely that closing the gaps in the existing vegetation alongside the railway line will result in a significant increase in predation [REP-294]. The ExA accepts NE advice regarding "increased predation" by raptors.

- 5.61 NE has commented in both its response to the ExA's second round of questions [REP-227] and during the specific hearing on habitats, ecology and nature conservation on 5 February 2014 [HR-114] that, in the absence of appropriate visual screening, secured and delivered through requirement 48 [APP-107] there would remain a reasonable scientific doubt over impacts on the integrity of the Humber Estuary SPA.

Conclusion

- 5.62 The ExA is satisfied that Requirement 48 in the draft DCO [APP-114], as amended (see Section 7) is sufficiently robust to enable the Secretary of State to ascertain that there will be no adverse effect on Humber Estuary SPA site integrity.

- 5.63 This is because the Requirement states :

No trains shall serve the authorised development until a scheme of planting to be carried out [as required by 48(2)(f)]..... has been submitted to and approved in writing by the relevant planning authority in consultation with Natural England and Network Rail.....

- 5.64 The ExA understands this to mean that if the applicant is unable to agree the necessary screening of the railway line, trains will not be able to serve the authorised development.

- 5.65 The ExA in paragraph 5.50 above, details its acceptance of reasonable scientific doubt regarding the habituation of NKHP bird species to visual and noise disturbance from train movements put forward by the applicant [APP-009; APP-058]. However, the ExA

believes its reasonable scientific doubt has been removed, because of the robust mitigation measures secured through Requirements 46 and 48 in the draft DCO [APP-114].

Conclusion

- 5.66 The ExA believes that the conservation objectives for the Humber SPA European Site will not be affected by the project given the mitigation measures secured by Requirements in the draft DCO [APP-114]. These mitigation measures will ensure the avoidance of 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.
- 5.67 The ExA believes there is sufficient evidence to allow the Secretary of State to conclude that adverse effects on integrity can be excluded for all the Humber Estuary European sites.

CONSIDERATION OF ALTERNATIVE SOLUTIONS/IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST(IROPI)

- 5.68 The applicant concluded that the project will not adversely affect the integrity of the European sites detailed in Paragraph 2.2 of the RIES [REP-246] either alone or in combination with other plans/projects [APP-058] and in the revised integrity matrices submitted on 10 February 2014 [REP-235] conclude no likely adverse effects on any European sites.
- 5.69 The ExA provided the applicant with the opportunity to detail its consideration of alternatives and IROPI at the February 2014 hearings [HR-094][HR-095]. The applicant declined to submit any evidence on alternative solutions or IROPI during the Examination.

6 COMPULSORY ACQUISITION

INTRODUCTION

6.1 This section of the report deals with the request for powers to compulsorily acquire rights and/or land.

6.2 It is arranged into the following sub-sections:

- (i) The Request for Compulsory Acquisition Powers
- (ii) The Legislative and Guidance Context
- (iii) How the ExA Examined the Case for Compulsory Acquisition
- (iv) Adequacy of Funding
- (v) The Purposes for which the Land and/or Rights are Required
- (vi) Alternatives
- (vii) Specific Groups of Affected Persons and Types of Land
- (viii) The Applicant's Case for Acquisition of land and rights for development
- (ix) The Applicant's Case for Acquisition of land and rights not for development applied for.

In this sub-section issues surrounding the overall approach are considered before individual affected persons are examined.

- (x) Deliverability

THE REQUEST FOR COMPULSORY ACQUISITION POWERS

6.3 The land and rights for which Compulsory Acquisition (CA) powers are sought relate to three elements, the Principal Project Area (PPA); the Electrical Grid Connection land; and the Gas Connection land.

6.4 The land is varied in its current use and includes trees, shrubbery, pasture, grassland, ditches, thickets, arable, public footpaths and highways, hard standing, railway and associated infrastructure, parking, premises, river bed and a jetty.

6.5 It is important to note that the applicant has not applied for development consent for the works on the electrical grid connection land or the gas connection land but has applied for powers of CA over that land. This issue is considered later in this section of the report.

THE LEGISLATIVE AND GUIDANCE CONTEXT

The Requirements of the Planning Act 2008

6.6 With reference to s.123 of the Planning Act 2008, as amended, the ExA confirms that one of the three alternative conditions is met in that the application for the Order included a request for CA of the land to be authorised.

6.7 Section 122 of the Planning Act 2008, as amended, states that:

'an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.'

(2) The condition 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.

(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily

In the case of this particular application condition (2)(c) does not apply.

6.8 DCLG *Guidance related to procedures for the compulsory acquisition of land*, published in September 2013, adumbrates the provisions in the legislation. In respect of s.122(2) these are that:

'all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored; the proposed interference with the rights of those with an interest in the land is for a legitimate purpose; it is necessary and proportionate; the land to be acquired is no more than is reasonably required for the purposes of the development; the land to be taken is no more than is reasonably necessary for that purpose; and that is proportionate.'

6.9 In respect of s.122(3) there is the need to establish that:

'there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired and that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.'

Human Rights Act 1998 considerations

6.10 In considering specific plots and specific parties the ExA has had particular regard to Article 1 of the First Protocol to the European Convention on Human Rights, as embodied in the Human Rights Act 1998, which states that:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions

except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

- 6.11 The ExA has also had regard to Article 8 dealing with the right to respect for private and family life. None of the applications for CA relate to the CA of a house or dwelling.
- 6.12 The ExA concludes that, the process of examining this application, including the opportunities to submit representations, a series of written questions and the opportunities to be heard at hearings, all means that those whose rights may be affected have been given access to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

- 6.13 The ExA examined the case for CA through:
- Identifying CA, including issues related to the requirement for the powers sought; the need to establish a compelling case in the public interest; and financial arrangements as a principal issue [DEC-004]
 - Specific questions on CA (questions CA01 – CA39) in the first round of written questions issued on 20 September 2013 [DEC-005]
 - Specific questions on CA and s.127 (questions CA2/01 – C2/41 and s.127/01 – s.127/07) in the second round of written questions issued on 13 December 2013 [DEC-010]
 - Specific questions on CA (questions CA03/01 – C03/04) in the third round of written questions issued on 25 February 2014 [DEC-015]
 - Holding a Compulsory Acquisition Hearing on 21 and 22 November 2013
 - Holding a Compulsory Acquisition Hearing on 11, 12 and 13 February 2014
 - Holding a s.127 Hearing on 12 February 2014
 - Issuing Procedural Decisions with specific substantive elements related to CA on:
4 October 2013 [DEC-006];
13 December 2013 [DEC-010];
5 February 2014 [DEC-015];
3 March 2014 [DEC-016].

ADEQUACY OF FUNDING

- 6.14 In considering the adequacy of funding, the ExA had regard to EN-1, in particular para. 4.19 and to DCLG *Guidance related to procedures for the compulsory acquisition of land*, published in September 2013, in particular, paras. 9, 17 and 18.
- 6.15 The application documents submitted on 25 March 2013 included a five page Funding Statement [APP-053] and the adequacy, source and availability of the funding required for both acquiring the land and implementing the project for which the land is required was addressed in the ExA's first and second written questions and in both the November 2013 and February 2014 CA hearings.

The funding required for implementing the project

- 6.16 Issues surrounding the funding required for implementing the project were primarily examined through the ExA's second written questions [DEC-010] (see, in particular, qs. CA2/26 – CA2/35) and through the CA hearing in February 2014.
- 6.17 Broad estimates of the cost of implementing the project are given in section 9 of the CCR Feasibility Study / CCS Design Concept Report [APP-066]. These were summarised in the applicant's response to q CA2/31(a) [REP-176] as:

The capital expenditure ("capex") for a generic new-build CCGT plant is £575/kw or £270,000,000 for a 470 MW plant and the capex for a new-build IGCC power plant with CO2 capture is £3,010/kW, or £1,270,000,000 for a 423 MW plant.

- 6.18 This response stressed that:

these costs are related to a generic plant and specific data for the Project cannot be submitted for evident commercial reasons.

The source of the funding for implementing the Project

- 6.19 The ExA explored whether the applicant had potential access to such a level of resources, particularly as the applicant's response to written question CA2/30 [REP-176] states that:

The funding for the Project will be provided by the Applicant, C.GEN Killingholme Limited with support from C. GEN SA.

and that paras. 2.1 – 2.5 of the Funding Statement [APP-053] state that:

As at 31 December 2011 the consolidated accounts of C.GEN stated total net assets of £4,476,461. [...] Accounts for the period up to 31 December 2012 have yet to be finalized for C.GEN S.A. Draft accounts show total assets of €298,795,448.96.

- 6.20 The applicant's response to question CA2/32(b) states, in addition, that:

All funds of the sum of circa. 230m euros can be claimed with 1 month's notice. In the C. GEN Group, there is no commitment to invest and no plan to invest or obtain permits for any project except for the Project. Therefore, the whole sum stated above is available to the C. GEN North Killingholme Power Project.

- 6.21 This still left a shortfall between the funds directly available and the applicant's estimated capex for either a generic new-build Combined Cycle Gas Turbine (CCGT) plant or for a new-build Integrated Gasification Combined Cycle (IGCC) power plant.

- 6.22 The ExA, therefore, examined the arrangements to secure debt funding.

- 6.23 The applicant estimates that:

the equity base of the C. GEN group can serve as a base to attract £200 million based on a 50/50 debt/equity ratio regardless of whether the business model is based on merchant sales or on a Power Purchase Agreement ("PPA")

and that:

In case of moving to a full IGCC set up, the equity base of the C. GEN group will serve as a platform to move to attract a J/V partner so that the equity base is upgraded to 400 million £ or more; based on a PPA (which will if such decision is taken be secured up front to move to the full IGCC phase) this could secure between £500 and £600 million of project financing.

- 6.24 It appears that, whilst the applicant stated that discussions had been held, no commitments to such funding had been obtained – the applicant's response to q.CA2/34(d) states that:

Once the Project has matured further, C.GEN will approach commercial banks and other potential lenders in order to obtain formal commitments.

- 6.25 The applicant stated (in paras. 8.9 and 8.10 of its *Written Summary of the Compulsory Acquisition Hearing on 11-13 February 2014* [HR-125]) that at the hearing Mr Heyselberghs (a Board member of C.GEN SA) had confirmed that the commitment to the Project was discussed by the board of C.GEN SA and this is noted in board minutes. But the *Written Summary* also stated that:

At this stage the nature of any guarantees in respect of such funding should not be given as it is inappropriate and premature to do so.

- 6.26 The issue of funding for the project as a whole and for the CA was the subject of a number of representations from other interested parties and affected persons and of discussion at the Compulsory Acquisition hearings. For example, Able Humber Ports (Able) stated in its *Case Summary for the Issue Specific Hearing on Compulsory Acquisition – 11 And 12 February 2014* [HR-135] that:

Able noted that there remained no written commitment by resolution or undertaking from C.GEN or any of its associated companies to provide any fixed amount of funding for the project.

- 6.27 We note that the applicant has not provided certainty in respect of the funding of the implementation of the project. In considering this, we have had close regard to the guidance, and, in particular the advice that:

It may be that ... the details cannot be finalised until there is certainty about the assembly of the necessary land. In such instances, the applicant should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (public or private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.

Conclusion in relation to the funding of the implementation of the project

- 6.28 In summary, the ExA considers that there is a shortfall for funding the implementation of the Project. In considering this, the ExA have had regard to CLG DCLG *Guidance related to procedures for the compulsory acquisition of land* and taken into account that the applicant has indicated how that shortfall will be met. The approach outlined is reasonable and there is no evidenced reason to doubt the applicant's assertions that debt funding can make up any shortfall.
- 6.29 We conclude that, whilst it would have been helpful if the applicant could have introduced more certainty, the approach it has taken does not run counter to the minimum suggested requirements set out in guidance, quoted above.
- 6.30 The ExA is, therefore, sufficiently confident that the resource implications of the implementation of the proposed scheme have been met adequately.

The funding required for CA

- 6.31 The Funding Statement did not contain any estimate of the amount of funding that would be required for CA. However, following written questions by the ExA, the applicant estimated the cost of CA as being £495,000 (Applicant's response to

q.CA2/31(b) [REP-176]). The response to this question sets out the assumptions on which this estimate is based.

Securing the funding for CA

6.32 Para 9 of the 2013 DCLG Guidance states that the applicant:

should ... be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available. Otherwise, it will be difficult to show conclusively that the compulsory acquisition of land meets the two conditions in section 122

6.33 During the Examination, the ExA sought to establish whether guarantees securing the funding for CA could be put in place now rather than leaving the type of security to be agreed later. The applicant did not accept the necessity for this. For example, in paras 8.10 and 8.11 in its summary of its oral representations at the February 2014 CA Hearings [HR-125], the applicant states that:

At this stage the nature of any guarantees in respect of such funding should not be given as it is inappropriate and premature to do so. However, Article 8 of the draft DCO will ensure that the appropriate guarantees, which are approved by the relevant planning authority, are in place prior to the commencement of development. The approval of the relevant planning authority is important as this is an appropriate check to ensure that any guarantee provided by C.GEN SA is capable of being enforced in the UK.

6.34 Article 8 of the ExA's recommended draft DCO (see Appendix E) states that:

The authorised development must not be commenced and the undertaker must not begin to exercise the powers of articles 10 to 28 inclusive, 31 and 32 of this Order unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authority.

6.35 North Lincolnshire Council (NLC) did not make any representations relating to the proposed Article 8.

6.36 In response to the ExA's first written questions [REP-071] (q.CA 38) the applicant stated that:

A parent company guarantee can be provided by C. GEN SA and that if a parent company guarantee will be provided, a legal opinion confirming that a parent company guarantee may be given by C.GEN SA will be sought, should the Examining Authority consider it necessary.

- 6.37 At the close of the Examination, the applicant had not provided any further mechanism to assure the ExA that the funding required for CA was in place such as a s.106 agreement or a parent company guarantee.

Conclusion on Funding for CA

- 6.38 The ExA sought further confirmation that adequate funding would be likely to be available for CA. The applicant was unable to provide a parent company guarantee now or to commit to providing one in the future.

- 6.39 However, we also note the statement quoted in para. 6.20 above that:

In the C. GEN Group, there is no commitment to invest and no plan to invest or obtain permits for any project except for the Project.

and that the stated assets of C.GEN, the applicant exceed the applicant's estimate of cost of CA.

- 6.40 Article 8 does not tie the applicant to providing any particular form of security. There would have been more certainty about funding for CA liabilities if the applicant could have agreed a form of security now (whether parent company guarantee or otherwise).

- 6.41 However given the applicant's overall assertions about company assets and debt funding it is considered on balance reasonable to rely on Article 8 (and, therefore, on the role of the Local Planning Authority)

THE PURPOSES FOR WHICH THE LAND AND/OR RIGHTS ARE REQUIRED

The general case

- 6.42 The applicant's overall case for CA is given in the Statement of Reasons, as amended and dated 24 January 2014 [APP- 105]. Broadly, these are that:

C.GEN's purpose in acquiring the Order Land, in accordance with the provisions of the PA 2008, is to secure the powers to construct and operate the Project. The inclusion of powers of compulsory acquisition in the DCO is sought in order to ensure that this is achieved. (para 7.14)

and that

The Application is being made to ensure that C.GEN has the requisite powers to construct and operate the Project; a nationally significant piece of infrastructure for which there is a pressing national need. The Application also seeks powers of compulsory

acquisition over land required for the construction and operation of the Project. (para. 2.5).

6.43 More specifically, paras 7.10 and 7.12 state that:

C.GEN does not have interests in land in other areas of the Order Land, and/or land is encumbered by rights and interests in land. For these areas, C.GEN is seeking to acquire the necessary rights in land in order to construct and operate the Project, or powers to override rights and interests in land. This is the case in respect of the Gas Connection Land and the Grid Connection Land. It is seeking these powers to ensure that the Project can be delivered, and the Government's policy that the provision of new generating capacity is met within a reasonable timescale.

Without powers of compulsory acquisition, the Order Land may not be assembled, uncertainty will continue to prevail and C.GEN considers that its objectives and those in Government policy would not be achieved.

6.44 The amended Statement of Reasons [APP-105] makes full reference to the tests set in legislation and in guidance for CA. The applicant states that;

Pending the availability of compulsory acquisition powers, C.GEN will continue to seek to purchase interests by agreement where the opportunity arises. (para. 7.13)

6.45 It is important to note that no evidence has been submitted to the Examination questioning the overall need for the project. (see para. 4.21).

6.46 The ExA does not consider that the overall need for the Project is an issue in relation to CA and has taken into account the overall need as one factor in assessing whether there is a compelling case in the public interest (s.122(3) of the Planning Act 2008 as amended) to justify CA.

6.47 The amended Statement of Reasons [APP-105] then sets out – in Table 1 - the more detailed purpose for each plot by relating those plots to specific works by Works number and to the ecological mitigation land and the gas and grid connector corridors.

6.48 The case for CA for specific plots is set out later in this section.

ALTERNATIVES

6.49 Para. 8 of the September 2013 *DCLG Guidance related to procedures for the compulsory acquisition of land* states that:

The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to

compulsory acquisition (including modifications to the scheme) have been explored

- 6.50 Section 4 (paras. 4.34 to 4.43) of this Report, above, has considered the overall issue of the consideration of alternative sites for the project. The ExA have concluded that we:

consider that the examination of alternatives has been addressed adequately and that the requirements of NPS EN-1 and the EIA Regulations are met (para 4.43).

- 6.51 The applicant has considered the alternatives to CA in the Amended Statement of Reasons [APP-105]. In respect of the operations area, this states that:

C.GEN owns the freehold of the majority of the Operations Area. Further, through its affiliation with CPK, it can secure other land required for the purposes of constructing and operating the Project

- 6.52 The amended Statement of Reasons also sets out the factors in relation to the corridors chosen for the gas and grid connectors. Where there are issues arising from this in relation to specific plots these are considered later on in this section.

- 6.53 In addition, the Statement of Reasons states that;

Pending the availability of compulsory purchase powers, C.GEN will continue to seek to purchase interests by agreement where the opportunity arises.

- 6.54 The ExA have seen evidence of a range of contacts between parties involved in issues of CA and sees no reason to doubt that, in general, this approach has been adopted.

- 6.55 The issue of alternatives to CA itself is examined in relation to specific plots later in this section and the ExA recommends that, in relation to one group of plots, that an alternative to CA does exist.

- 6.56 However, whilst this does not pertain for all plots, the ExA concludes that overall and in general all reasonable alternatives to CA (including modifications to the scheme) have been explored. The exploration of reasonable alternatives in relation to the plots related to the Grid Connector corridor, in particular, are covered in paras 6.303 onwards, below.

SPECIFIC GROUPS OF AFFECTED PERSONS AND TYPES OF LAND

- 6.57 This part of this section deals with specific groups of affected persons and types of land:

- Crown Land
- Special category land

- Statutory Undertakers

Crown Land

6.58 In coming to our view on Crown Land, set out in the subsequent paragraphs of this sub-section, the ExA has considered the statutory position set out in s.135 and s.227 of the Planning Act 2008 (as amended) and has had regard to the guidance contained, in particular, in paras 39 and 40 and in Annex B of the DCLG *Guidance related to procedures for the compulsory acquisition of land* published in September 2013.

6.59 The relevant parts of s.135 are that:

(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if— (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and b) the appropriate Crown authority consents to the acquisition.

(2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

6.60 In response to the ExA's questioning, the applicant has made submissions about the application of s.135.

6.61 As summarised in para. 2.2.5 and 2.2.6 of the applicant's *Written Summary of Oral Representations [made at] Issue Specific Hearing - Compulsory Acquisition - 21-22 November 2013 [HR-052]*:

C.GEN takes the position that it is not necessary to make a section 135 application. The Crown owns, and has the superior interest, in all land in England. Freehold estates and leasehold estates are both rights granted out of the Crown. C.GEN takes the position that a section 135 application is not necessary because otherwise every single application that went before the Examining Authority would require such an application, since all land is held subject to a Crown interest.

6.62 The applicant's response to the ExA's third round of questions [REP-304] stated that:

C.GEN is not proposing to acquire an interest in land from the Crown Estate, as it will acquire sufficient interest(s) from C.RO/ABP. As the Application does not include any proposal to acquire land, or an interest in land directly from The Crown, the provisions of section 135 of the Planning Act 2008 do not apply.

6.63 The ExA also notes, however, that in the applicant's *Written Summary of Oral Representations [made at the] Issue Specific*

Hearing - Compulsory Acquisition -11 - 13 February 2014 [HR-125] the applicant states that:

It was acknowledged that if C.GEN was unable to reach agreement with ABP/C.RO that it would need to make an application pursuant to S.135 of the Planning Act 2008.

- 6.64 The ExA's recommendations in relation to the statutory requirements under Section 135 are dealt with below.

Section 135 (1)

- 6.65 The revised Book of Reference [APP-110] dated 10 February 2014 shows both 'The Queen's Most Excellent Majesty in Right of Her Crown' and Associated British Ports (ABP) as Category 1 owners of plots 06/06, 06/08, and 06/09. Additionally, Sheet No. 6 in the Combined Works and Land Plans [APP-004] shows these plots as 'Crown Land' and it lists these plots in Part 4.³⁷ It is worth noting that ABP is acting in this case in its role as the Humber Conservancy, the Competent Harbour Authority for the River Humber, rather than as a ports operator.

- 6.66 In a letter dated 11 March 2014 [SEC-053], received by e-mail in advance of the closure of the Examination at the end of that day, the applicant's solicitors, DLA Piper stated that:

C.GEN will no longer be seeking powers of compulsory acquisition over ABP's land or interests in land. Pursuant to an amendment to Article 16(5) of the final draft Development Consent Order submitted by C.GEN on 11 March 2014, any land or interest in land owned for the time being by ABP shall be excluded from the powers of compulsory acquisition under Articles 16 – 27 of the Order.

- 6.67 The applicant's proposed Article 16(5)(b) [APP-114] now states that:

Articles 16 to 27 of this Order shall not apply to any land or interest owned by Associated British Ports (company number ZC000195).

- 6.68 The ExA notes that the timing of this submission meant that its contents and implications could not be examined in the Examination period. Nonetheless, it is considered that the exclusion of ABP's interest (being an interest in Crown land held otherwise than by the Crown) obviates the need for any consent under Section 135(1).

³⁷ This part specifies the owner of any Crown interest in the land which is proposed to be used for the purposes of the order for which application is being made (Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009) with The Queen's Most Excellent Majesty in Right of Her Crown being given as the 'Freehold Owners or Reputed Freehold Owners'.

- 6.69 Although, as stated above, the applicant asserts that C.GEN is not proposing to acquire an interest in land from the Crown Estate it is the ExA's view that, as currently drafted, this would be the effect of the DCO.
- 6.70 It should be noted that in response to the Examining Authority's (ExA) question as to whether if the necessary interests in land are acquired C.GEN would be withdrawing its powers of CA in respect of this land it was explained that this would not be the case. It was necessary to retain the powers in the event of default by ABP/CPK. Also, the powers can be used to clear any residual rights belonging to third parties.
- 6.71 Article 16 authorises CA of so much of the Order land as is required. Interests held by the Crown are not excepted from the Book of Reference and therefore Article 16 would have the effect of authorising CA of land held by the Crown. To address this, the ExA recommends that the phrase '... except for interests held by the Crown' is added to the end of Article 20(1) in the DCO [APP-107].
- 6.72 That Article would now read:
- 20.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the Book of Reference and shown on the land plans, except for interests held by the Crown.*
- 6.73 This would be in line with, and would support, the applicant's stated position that it is not proposing to acquire an interest in land from the Crown Estate.

Section 135(2)

- 6.74 The DCO would authorise infrastructure in relation to cooling water on Plot 06/06 and a temporary working area on plots 06/08 and 06/09. All three of these plots, as shown on Sheet 6 of the Combine Land and Works Plan and as described in the Book of Reference [APP-110] comprise in part or in whole the 'river (Humber) and bed thereof' and extend below Mean Low Water and are Crown land. In the ExA's view as provisions in the DCO apply to Crown land, the appropriate Crown authority's consent is required.
- 6.75 The applicant's response to the ExA's third round of questions [REP-304] (whilst addressing the question of CA of Crown land and not specifically "any other provision applying in relation to Crown land"³⁸) provided its reasoning as to why s.135(2) of the Planning Act 2008 as amended does not apply in this case:

³⁸ Section 135 (2)

Work No. 3a is work comprising a piled platform and equipment for the intake of cooling water. As noted above, this is to be construction on land over which ABP has a 999 year lease and C.GEN will be acquiring the property right or estate required to construct Work No. 3a from ABP and not from The Crown. As such, provisions in relation to the construction of Work No. 3a apply in relation to ABP's land and not that of the Crown.

It cannot have been intended that s.135(2) should apply in a case such as this where The Crown is ultimate freeholder because, as noted above, all freehold interests in land are ultimately granted out of the right of The Crown and consequently The Crown's estate would be required for any compulsory acquisition sought pursuant to the Planning Act 2008.

- 6.76 At the close of the Examination (in the applicant's response to the ExA's third round of written questions [REP-304]), the applicant stated that:

The Crown Estate has already stated that it agrees with C.GEN's statement of the position on this issue by email dated 18 September 2013, as set out in C.GEN's answer to question CA03 of the Examining Authority's first written questions. In light of the above, C.GEN is of the view that no further joint statement is required as the position with the Crown Estate has not changed.

- 6.77 The relevant email from the Crown Estate, contained in an appendix to the applicant's responses to first questions [REP-076], is dated 18 September 2013 and states that:

I write to confirm that the matters set out in the 5th paragraph of DLA Piper's letter of 27 August 2013 ... reflect The Crown Estate's understanding of its position in relation to C.GEN's Application....

- 6.78 The fifth paragraph of DLA Piper's letter of 27 August 2013 states that:

It was agreed in the meeting dated 2 July 2013 that The Crown estate has no objection to C.GEN carrying out negotiations with ABP with a view to acquiring the necessary estate or property right. The Crown Estate would need to consent to any further property right being created for the benefit of C.GEN Killingholme Limited (whether or not it be out of the existing underlease that C.RO holds). It is confirmed by C.GEN that the application does not include any proposal to acquire land, or an interest in land from the Crown. Therefore, the provisions of section 135 of the Planning Act 2008 do not apply. C.GEN is aware that should this position change then the Crown Estate's position in relation to any consent required under section 135 of the Planning Act 2008 is reserved and for the avoidance of doubt, the Crown Estate confirms that no consent of the Crown Estate Commissioners has

been given to any of the matters which are subject to Crown consent by virtue of Section 135 of the Planning Act 2008.

Conclusion

- 6.79 The ExA does not consider that the statement from the Crown Estate quoted in para. 6.77, above, constitutes express consent under s.135(2) for the inclusion of the provision in the DCO. The Secretary of State will therefore need to consider whether such consent is required before the DCO can be made.
- 6.80 Consequent on this recommendation the ExA notes that Schedule 5 of the applicant's recommended DCO [APP-114] setting out Land of which Temporary Permission May be Taken lists plots 06/08 and 06/09 under the purpose of provision of a working area, laydown area and construction site for the purposes of the authorised development.
- 6.81 The Secretary of State is requested to note that, as stated in the previous paragraph, the ExA does not consider that express consent has been given by the Crown Estate for such works on Crown Land or for such powers in the DCO to apply to Crown land.

Special category land

- 6.82 There is no special category land. The Book of Reference, as submitted with the application documents on 25 March 2013 contained a Part 5 which specified land the acquisition of which is subject to special parliamentary procedure, which is special category land and/or which is replacement land.
- 6.83 Following the ExA's second round of questions [DEC-010] and the February 2014 hearing on CA, the applicant deleted this Part in the revised version of the Book of Reference dated 10 February 2014 [APP-110]. Alternatively (and to the same end) the applicant could have retained the part whilst noting that it was blank.

Statutory Undertakers

The case under s.127 or s.138

- 6.84 On 15 November 2013 the applicant submitted a number of applications for certificates under s.127 of the Planning Act 2008 (as amended). These applications were in respect of:
- Associated British Ports;
 - Anglian Water Services Limited;
 - Centrica KPS Limited;
 - Centrica Storage;
 - The Environment Agency;
 - E.ON UK Plc.;
 - E.ON UK Gas;
 - Heron Wind Limited;

- National Grid Gas;
- National Grid Electricity Transmission Plc.;
- National Grid Property Holdings Limited;
- Network Rail Infrastructure;
- Optimus Wind; and
- Smart Wind.

6.85 The applications covered both the acquisition of all interests and the acquisition of new rights.

6.86 Subsequently, an application solely in respect of s.138 of the Planning Act 2008 was submitted in respect of British Telecom.

6.87 These are dealt with in Appendix F.

6.88 Protective Provisions are dealt with in Section 7, below and individually in Appendix F.

6.89 The positions of Statutory Undertakers have been considered in this section of the report and in Appendix F, dealing with applications for s.127 Certificates.

6.90 In these parts of the report, the s.127 Examiner has concluded that he cannot recommend a s.127 Certificate is given in relation to the land/interests held by:

- Centrica KPS Ltd.
- Centrica Storage
- Heron Wind Ltd.
- National Grid Gas Plc.
- National Grid Electricity Transmission Plc.
- Optimus Wind Ltd.

The ExA cannot, therefore, recommend the grant of CA powers in respect of land or new rights in respect of these statutory undertakers

6.91 In the absence of any agreement with National Grid Gas Plc., National Grid Electricity Transmission Plc., Centrica Plc., Able and the Hornsea Project Companies the ExA is unable to conclude that the protective provisions proposed by the applicant are sufficient to avoid serious detriment to the carrying on of their undertakings.

6.92 It is therefore recommended in Section 7 that the Secretary of State does not include Section 8 parts 3, 5, 6 and 7 of the DCO as drafted by the applicant.

6.93 Further, in order to effect these recommendations, the ExA recommend that Article 27 of the ExA's recommended draft DCO (in Appendix E of this report) should be amended by an addition to sub-article (d) which would read:

(d) Powers under this article cannot be exercised in relation to land and rights held by Centrica KPS Ltd. in respect of plots 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05, Centrica Storage Plc. in respect of plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03, Heron Wind Ltd. in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05, National Grid Gas in respect of plots 04/10, 05/01, 05/03, 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 07/08, 07/09, 07/11, 08/01, 08/02 08/03, 09/02, and 09/05, National Grid Electricity Transmission in respect of plots 09/02, 09/04 and 09/05 or Optimus Wind Ltd in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05.

6.94 The full article would now read:

Statutory undertakers

27. *The undertaker may—*

(a) *acquire compulsorily the land belonging to statutory undertakers shown on the land plans within Order limits and described in the book of reference;*

(b) *extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and*

(c) *acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.*

(d) *Powers under this article cannot be exercised in relation to land and rights held by Centrica KPS Ltd. in respect of plots 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05, Centrica Storage Plc. in respect of plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03, Heron Wind Ltd. in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05, National Grid Gas in respect of plots 04/10, 05/01, 05/03, 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 07/08, 07/09, 07/11, 08/01, 08/02 08/03, 09/02, and 09/05, National Grid Electricity Transmission in respect of plots 09/02, 09/04 and 09/05 or Optimus Wind Ltd in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05.*

THE APPLICANT'S CASE FOR ACQUISITION OF LAND AND RIGHTS FOR DEVELOPMENT

6.95 This part of this section deals first with CA of land and rights which the applicant maintains is necessary for the development.

6.96 In this section – and the next – affected persons are dealt with individually on the first occasion in which they are mentioned as having an interest.

Operational Area

- 6.97 The Book of Reference dated 10 February 2014 [APP-110] identifies ten plots in which the applicant applies to acquire 'all interests'. These plots are 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03. These plots cover the operational area and relate to works 1, 2A, 2B, 3A, 7 and 8. As such, they constitute land which is required for the development to which the development consent relates or is required to facilitate or is incidental to that development.
- 6.98 By virtue of their direct functional need for the land for their operational area, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met.
- 6.99 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras. 6.49 to 6.56, above.
- 6.100 The Category 1 owners of these plots are:
- C.GEN Killingholme Ltd.
 - National Grid Property Holdings Ltd.
 - National Grid Gas
- 6.101 The Category 2 owners are:
- Centrica Storage Ltd.
 - National Grid Property Holdings Ltd.
 - National Grid Gas
 - Anglian Water Services
 - Shell UK Ltd.
 - Conocophillips (UK) Ltd.
 - North East Lindsay Drainage Board
 - C.RO Ports Killingholme Ltd.
- 6.102 The position of the Category 1 and Category 2 affected persons are covered individually below.
- C.GEN Killingholme Ltd.*
- 6.103 C.GEN Killingholme Ltd is the applicant.
- National Grid Property Holdings Ltd. and National Grid Gas*
- 6.104 National Grid Gas plc. is the subject of applications for certificates under s.127, and in respect of s.138, of the Planning Act 2008 as amended in relation to, *inter alia*, all the plots listed above (para. 6.97). This application is considered and a recommendation made to the Secretary of State for Energy and Climate Change in Appendix F of this report.

- 6.105 The s.127 Examiner has noted discrepancies between the application for certificates and the Certificates and Notice supplied by the applicant which only contain plots 08/01, 08/02 and 08/03 out the plots listed above.
- 6.106 In respect of these plots, in the absence of any agreement with National Grid by the close of the Examination, the s.127 Examiner is unable to conclude that the protective provisions proposed by the applicant are sufficient to avoid serious detriment to the carrying on of their undertakings.
- 6.107 The ExA considers that the same argument applies in respect of all the plots in which National Grid Property Holdings Ltd and National Grid Gas Plc. have an interest.
- 6.108 It is worth recording that these parties submitted a joint statement by C.GEN, National Grid Gas plc. and National Grid Electricity Transmission Plc. ("National Grid") in relation to the current position between the parties at 17.49 on the day the Examination closed (11 March 2014) [AS-020]. This stated that:

C.GEN and National Grid have engaged constructively in relation to a number of matters relating to the interface of C.GEN's project with National Grid's land and apparatus. The two parties are engaged in documenting the outcome of their discussions. This has resulted in agreed protective provisions for the benefit of National Grid which have been included in the final DCO.

C.GEN and National Grid do not anticipate completing the remaining agreements required to resolve these interfaces prior to the close of examination today. However, both confirm that they are continuing discussions and will report the position when agreement is achieved.

Whilst the parties understand that the matter may not be taken into account by the Examining Authority, agreement would allow National Grid's representations and s127 applications to be withdrawn. This, and the parties' statement would be available to the Secretary of State in considering the application.

Recommendation in Respect of National Grid Property Holdings and National Grid Gas Plc.

- 6.109 In the absence of any agreement on protective provisions with National Grid by the close of the Examination the ExA is unable to conclude that the protective provisions proposed by the applicant are sufficient to avoid serious detriment to the carrying on of their undertakings. Therefore, the ExA is unable to recommend the grant of powers of CA in respect of National Grid Property Holdings and National Grid Gas Plc., in respect of plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03.

Centrica Storage Ltd.

- 6.110 Centrica KPS Limited and Centrica Storage Ltd are wholly-owned subsidiaries of Centrica Plc., a statutory undertaker for the purposes of s.127(8) of the Planning Act 2008. Centrica Storage Ltd is the subject of applications for a certificate under s.127, and in respect of s.138, of the Planning Act 2008 as amended in relation to, *inter alia*, all the plots listed above (para. 6.97). This application is considered and a recommendation made to the Secretary of State for Energy and Climate Change in Appendix F of this report.

Conclusion in respect of Centrica Storage Ltd.

- 6.111 In the absence of any agreement on protective provisions with Centrica Plc. by the close of the Examination the s.127 Examiner is unable to conclude that the protective provisions proposed by the applicant are sufficient to avoid serious detriment to the carrying on of their undertakings. Therefore, the ExA is unable to recommend the grant of powers of CA in respect of Centrica Storage Ltd, in respect of plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03.

Anglian Water Services

- 6.112 The Revised Book of Reference [APP-109] shows that Anglian Water Services (AWS) had Category 2 interests in all the plots listed in para.6.97, above. AWS provided a submission dated 18 February 2014 [SEC-047] which stated that:

I can confirm that the negotiations between the Applicant and AWS have concluded and the terms of the Protective Provisions and Article 14 are now agreed. AWS wish their representations to remain on the record as useful background information for the Examining Authority but its representations as far as the Section 127 application is concerned are withdrawn and the application is unopposed.

- 6.113 The applicant stated in its Responses to the Examining Authority's Third Written Questions (q.CA3/01 [REP-304]) that:

... negotiations have resulted in agreed protective provisions and the withdrawal of Anglian Water's s.127 and s.138 representation. However, that agreement relates to the operation of the protective provisions, rather than an agreement to acquire land or an interest in land. As such, powers of compulsory acquisition will continue to be sought as part of C.GEN's Application.

- 6.114 AWS's Relevant Representation [RR-002] referred to the need for adequate protective provisions to be in place:

Anglian Water Services Limited has no objection in principle to the project but wish to be consulted as an interested party in order to

ensure that adequate protective provisions are contained within the DCO to protect any of Anglian Water's assets within the Order boundary and to safe guard Anglian Water's ability to function as a statutory water and sewerage provider.

Recommendation in respect of Anglian Water Services

- 6.115 By virtue of their direct functional need for the land for their operational area, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. As Protective Provisions have now been agreed, and the applicant has withdrawn its application for a certificate under s.127, the ExA considers that the Secretary of State can authorise CA of AWS' interests in plot numbers 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03.

Shell UK Ltd.

- 6.116 Shell UK Ltd. made a Relevant Representation [RR-008] and a Written Representation [REP-029]. The Relevant and Written Representations expressed concerns in relation to the stopping up of streets.

Shell UK Limited is concerned that the powers sought to be conveyed under section 11 of the draft order to temporarily stop up streets could cause a serious detrimental impact to the supply of fuel to Shell's petrol filling station network serviced from the depot at North Killingholme. [REP-029]

- 6.117 A letter from Savills on behalf of Shell UK dated 3 March 2014 [REP-288] stated that Shell UK Limited has instructed Savills to withdraw the Relevant Representation made on 19 June 2013 and the Written Representation made on 14 October 2013.

Please, therefore, accept this letter as notification of our formal withdrawal of all representations made in connection with this DCO application.

This withdrawal followed the signing of undertakings by the applicant [REP-244].

- 6.118 However, the applicant has not withdrawn the application for CA in respect of Shell UK. The Revised Book of Reference, dated 10 February 2014 [APP-109], shows Shell UK Limited as having a category 2 interest in plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03.

- 6.119 The applicant is applying to acquire all interests in respect of these plots.

Recommendation in respect of Shell UK Limited

6.120 By virtue of their direct functional need for the land for their operational area, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. As Shell UK Ltd. has withdrawn its representations, the ExA recommends that the Secretary of State can authorise CA of Shell UK Ltd's interests in plot numbers 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03.

Conocophillips (UK) Ltd.

6.121 Conocophillips (UK) Limited has not made any representations to the Examination and did not give evidence at any of the hearings. The applicant did not refer to them in its responses to the ExA's second round of questions [REP-176] or The applicant's response to the ExA's third round questions [REP-] on CA stated that:

As neither Conoco nor Vitol Group has any land interests which are affected by the Application, no ... negotiation is required. No agreement is necessary. However, powers of compulsory acquisition of the plots identified in the Book of Reference continue to be sought in order to clean the title.

6.122 The Revised Book of Reference, dated 10 February 2014 [APP-109], shows Conocophillips (UK) Ltd. as having a category 2 interest in plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03.

6.123 The applicant provided a copy of correspondence between itself and Phillips 66 at Appendix 3 to REP-305. This showed that Phillips 66 agreed that the statement that:

C.GEN does not consider that the application will have any impact on the interest shown on the attached plan.

was an accurate representation of the position.

Recommendation in respect of Conocophillips (UK) Ltd.

6.124 By virtue of their direct functional need for the land for their operational area, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. Taking into account the correspondence cited in the preceding paragraphs, the ExA recommends that the Secretary of State can authorise CA of Conocophillips (UK) Ltd's interests in plot numbers 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03.

North East Lindsay Drainage Board

- 6.125 North East Lindsey Drainage Board has not made any representations to the Examination and has not appeared at any of the hearings.
- 6.126 In its response to question CA2/36 [REP-176] the applicant stated that:

North East Lindsey Drainage Board has not requested Protective Provisions. As such, it is not considered that Protective Provisions are required.

- 6.127 The Revised Book of Reference, dated 10 February 2014 [APP-109], shows North East Lindsey Drainage Board as having a category 2 interest in plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03.

Recommendation in respect of North East Lindsey Drainage Board.

- 6.128 By virtue of their direct functional need for the land for their operational area, the ExA considers that the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity are met. Taking into account the correspondence cited in the preceding paragraphs, the ExA recommends that the Secretary of State can authorise CA of North East Lindsay's Drainage Board's interests in plot numbers 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03.

C.RO Ports Killingholme Ltd.

- 6.129 The Revised Book of Reference, dated 10 February 2014 [APP-109], shows C.RO Ports Killingholme Ltd (CPK) as having a Category 2 interest in plots 05/05, 07/03, 07/05 and 08/03.
- 6.130 Paras. 7.7 and 7.8 of the amended Statement of Reasons [APP-105] states that:

The majority of the Operations Area is already owned by C.GEN. C.GEN will also be able to obtain rights in land owned by CPK that are required in order to construct and operate the Project on that land because the companies are affiliated. Formal arrangements between the two companies are under discussion. For this reason, C.GEN has agreed to the inclusion of a provision in Article 16 of the draft DCO that powers of compulsory acquisition authorised by the DCO shall not apply to the interests of CPK or its parent or other group companies. This is considered appropriate because the companies are affiliated.

- 6.131 The final draft DCO [APP-114] does not mention CRO Ports Killingholme specifically but Article 16(5) of the final draft DCO does state that:

Articles 16 to 27 of this Order shall not apply to any land owned for the time being by the Simon Group Limited (company number 00052665) or its subsidiaries or to any mortgagee of such land in respect of an interest owned by the Simon Group Limited or any of its subsidiaries.

- 6.132 In its response to question CA2/10 [REP-176] the applicant explained that:

Article 16(5) of the draft DCO refers to the Simon Group Limited because that company is the parent of the company previously known as Humber Sea Terminal Limited (now CPK). The approach ensures that any assets at the port remains vested in Simon Group Limited [and] they are afforded the same protection as that afforded to CPK.

Recommendation in respect of C.RO Ports Killingholme

- 6.133 The ExA recommends that the applicant's stated intention to protect CPK be made clearer by modifying Article 16(5)(a) of the final draft DCO to state that:

Articles 16 to 27 of this Order shall not apply to any land owned for the time being by the Simon Group Limited (company number 00052665) or its subsidiaries, including C.RO Ports Killingholme Limited, or to any mortgagee of such land in respect of an interest owned by the Simon Group Limited or any of its subsidiaries.

Ecological mitigation land

- 6.134 The Book of Reference dated 10 February 2014 [APP-110] identifies eleven plots which, in whole or in part, are stated to require a new right for 'carrying out and maintaining ecological improvements and rights of access to establish and maintain the same'. Two of these plots relate to land designated as 'ecological mitigation land' (plots 05/02 and 07/01).

- 6.135 The Category 1 owners of these plots are:

- Able Humber Ports Ltd.
- Reeve Brothers (Farmers) Ltd.

- 6.136 The Category 2 owners are:

- Total Lindsey Oil Refinery Ltd.
- Total UK Ltd.

- 6.137 With unknown Category 2 ownership on both plots.

- 6.138 The position of the Category 1 and 2 owners is considered below.

Able Humber Ports Ltd.

- 6.139 Able Humber Ports (Able) made a relevant and a written representation and have made submissions at each stage throughout the Examination and have given evidence at both the November 2013 and February 2014 Compulsory Acquisition hearings – as well as at other issue specific hearings.
- 6.140 Able set out the basis for its objection to the application in its Relevant Representation [RR-023]. In relation to CA, the objection related to:
- mismatch between consultation boundary and application boundary
 - inappropriate lack of specificity
 - inadequate justification for CA powers, and
 - funding

6.141 The ExA has taken these comments into account in considering these issues in other parts of this section of the report.

6.142 In relation to the Acquisition of Rights over land required for operation of Able projects, Able stated in paras 5.13 and 5.14 of its written Representation [REP-006] that:

Plots 05/01, 05/02, 05/03, 07/08. 07/09 and 07/11 involve the acquisition of rights over land that comprises part of the Logistics Park. The location, type and manner of the pipes and / or cables has not been discussed with Able. Clearly, such rights could stymie the use and development of the Logistics Park in line with the planning permission agreed.

The proposed Order should restrict the location of the cables and or pipes to agreed reasonable locations across the Able land. Discrete crossing points over any pipes should be agreed. Requirements should be imposed to the effect that the implementation of the Generating Station will not restrict access to, or use of, the entirety of the Logistics Park.

6.143 The ExA note that 05/02 is related to ecological mitigation and is dealt with in this section, and that 05/03, 07/08. 07/09 and 07/11 are related to the grid connection and are dealt with in para 6.384 to 6.435, below.

6.144 The applicant responded [REP-154] that:

A sufficiently wide area has been proposed to enable an alignment to be chosen least likely to inconvenience Able, which has been contacted on a number of occasions to agree such a route.

6.145 However, Able confirmed in its response to the ExA's first round of written questions [REP-067] that there had been no progress

made towards reaching any agreement relating to the acquisition of Able's land, rights or easements at that time.

- 6.146 Able pursued its concerns expressed in its relevant and written representations through the Compulsory Acquisition hearing held on 21 and 22 November 2013 and provided a summary of the case put [HR-071]. An important issue considered was that of the degree to which the development of the permitted Able Logistics Park (ALP) would be impacted.
- 6.147 The position of Able in relation to the ecological mitigation land is explored further below.

Reeve Brothers (Farmers) Ltd.

- 6.148 Reeve Brothers (Farmers) Limited have not made any representations to the Examination and did not give evidence at any of the hearings. However, in para. 1.4 of its response to the ExA's first round of written questions (CA03) [REP-071], the applicant stated that:

A meeting was arranged on the 10th October 2013 with the ... land agent, Tony Dale, who represents a number of landowners and occupiers to discuss the option agreements. It is understood that Mr Dale represents: Mr Pagram, the Reeves brothers, Ianie Spilman, the Wilkins farmers (10 individual farmers) and the Turners. The meeting was productive and draft Heads of Terms will be issued for all Mr Dales' clients in the week commencing 14 October 2013.

- 6.149 As at the close of the Examination, the applicant states (q.CA3/01 [REP-304]) that:

Heads of Terms have been provided and agreed in principle. A draft options agreement and deed of grant has now been issued.

and goes on to state that:

It is C.GEN's objective to agree the option agreement and deed of grant by the close of the examination. However, should agreement not be reached by the close of the Examination on 11 March 2013, C.GEN remains willing to negotiate even after the close of the Examination.

Total Lindsey Oil Refinery Limited and Total UK Limited

- 6.150 Total Lindsey Oil Refinery Limited and Total UK Limited have not made any representations to the Examination nor have they appeared at any of the hearings.
- 6.151 In the Revised Book of Reference [APP-109] Total Lindsey Oil Refinery Limited and Total UK Limited are stated to have rights

only in respect of a restrictive covenant and a unilateral notice-option.

- 6.152 The applicant states in its Responses to the Examining Authority's Third Written Questions (q.CA3/01 [REP-304]) that:

C.GEN has received no response from Total regarding its request for clarification as to whether Total's unilateral notice right is still in existence. Total contacted C.GEN on 3 March 2014 seeking copies of the land plans and any title information which C.GEN holds regarding Total's interest. That information was provided to Total and C.GEN is awaiting a further response from Total.

However, there is no reason to believe that if the unilateral notice does remain in existence that C.GEN's acquisition of rights over the relevant plots would prevent Total from exercising its rights.

and that;

C.GEN has provided an undertaking to pay Total's reasonable and proper costs in connection with advice and negotiations in relation to Total's interest in the land within the Order limits.

- 6.153 In considering the application for CA in respect of these two plots, the ExA has also had particular regard to the tests in 2013 DCLG Guidance related to procedures for the compulsory acquisition of land relating to whether the land is required to facilitate or is incidental to that development:

the proposed interference with the rights of those with an interest in the land is necessary and proportionate; the land to be acquired is no more than is reasonably required for the purposes of the development; the land to be taken is no more than is reasonably necessary for that purpose; and that is proportionate.

- 6.154 Para. 2.3.21 of the Environmental Statement (ES) [APP-009] states that: 'Land required for ecological mitigation works is shown in green in Figure 2.2'. The land shown on Figure 2.2 comprises a triangle of land abutting, and to the north west of, the Operations Area. This triangle of land comprises plots 05/02 and 07/01, both with Able and Reeve Brothers (Farmers) Ltd.as Category 1 owners and Total Lindsey Oil Refinery Ltd. and Total UK Ltd. as Category 2 owners.

- 6.155 The justification for this purpose is referenced in para 7.9 of the Statement of Reasons [APP-052] which states that:

Parts of the Order Land - within the Principal Project Area, and located on the land of Able UK, are also required for the purposes of ecological mitigation. This is described fully in section 7 of the ES.

- 6.156 The relevant part of the ES is a confidential appendix which deals with the impact of the development of a receptor and which suggests mitigation for such impacts. Amongst the mitigation is the creation of an artificial habitat to the north and west of the proposed operational area of this Project.
- 6.157 With reference to whether the land is required to facilitate or is incidental to the development, the ExA note that the confidential appendix and discussion at the hearings on CA indicated that a degree of the activity of the receptor and an important habitat for it lay beyond the boundaries of the operational area of this application.
- 6.158 With reference to whether the proposed interference with the rights of those with an interest in the land is necessary and proportionate, plots 05/02 and 07/01 lie within the boundaries of a proposed development – the Able Logistics Park - that has already been granted planning permission. The developer of that scheme, Able, has stated that:

if compulsory acquisition powers were granted over the section of land currently labelled as mitigation land on the Applicant's plans this would frustrate the approved planning permission for the land's industrial use as a logistics park. (Case Summary of Able Humber Ports Limited: Issue Specific Hearing on Compulsory Acquisition – 21 and 22 November 2013 [HR-071])

- 6.159 The applicant has recognised that the ecological mitigation land is not under the ownership of C.GEN and sets out its reasoning in para. 11.1 of its summary of its oral evidence at the February 2014 CA Hearing (HR-125) that:

due to its proximity to C.GEN's site, there is a receptor that will need to be relocated prior to the commencement of development. If C.GEN proceeds and ALP does not, then C.GEN will need to relocate the receptor and there is no harm to ALP. If ALP goes ahead, it is understood that C.GEN's mitigation land will be developed, in which case Able Humber Ports will be responsible for relocating the receptor or ensuring its decline. If that is the case, where C.GEN had moved the receptor, Able would be carrying out an exercise it would have to perform for its own project in any case. If ALP proceeds first, then Able would have to move the receptor and C.GEN would not have to do so. In order to provide certainty that the receptor can be moved, C.GEN require powers of compulsion should it be required to relocate the receptor.

- 6.160 With reference to whether the land to be acquired is no more than is reasonably required for the purposes of the development; whether the land to be taken is no more than is reasonably necessary for that purpose; and whether it is proportionate, the ExA notes that the proposed artificial habitat and buffer zone

shown in Figure 5 of the confidential appendix is significantly smaller than the boundaries of plots 05/02 and 07/01.

- 6.161 Taking these factors into account, the ExA does not consider that the CA of plots 05/02 and 07/01 meet the tests in s.122 of the Planning Act 2008 as amended in that it has not been demonstrated that the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development. Further, the ExA is not satisfied that the proposed interference with the rights of those with an interest in the land is necessary and proportionate or that the land to be acquired is no more than is reasonably required for the purposes of the development.
- 6.162 Consequent on this recommendation the ExA recommends that Schedule 5 of the applicant's recommended DCO [APP-114] be amended to remove those plot numbers and that purpose related to 'ecological improvements' – plots 05/02, 05/03 and 07/01.
- 6.163 The reasons for this are, first, that the ExA has recommended that the application for powers of CA for new rights over those plots specified in Schedule 5 as being related to that purpose should be refused. Second, plot 05/03 is listed in Schedule 5 as being for 'ecological improvements' but is listed in the amended Book of Reference [APP-109] as being for a purpose related to 'gas supply pipes' and not for 'ecological improvements'. Para 6.433, below, recommends removal of plots related to 'gas supply pipes' as works for the gas supply pipes are outside of the scope of the DCO and did not form part of the DCO application. There is therefore no justification for granting temporary possession powers over these plots.

Recommendation

- 6.164 The ExA, therefore, recommends that the application for the CA of plots 05/02 and 07/01, with Category 1 and Category 2 owners being Able, Reeve Brothers (Farmers) Ltd., Total Lindsey Oil Refinery Ltd. and Total UK Ltd. be refused as, in respect of the plots, the tests set out in statute and in guidance have not been met.

Transmission of water for cooling and other purposes

- 6.165 The Book of Reference dated 10 February 2014 [APP-110] identifies sixteen plots over which, in whole or in part, the applicant wants to acquire a new right:

to install and keep installed, maintain, and operate pipes and associated infrastructure for the transmission of water for cooling and other purposes to and from the River Humber required for the authorised development and rights of access to install and keep installed, maintain and operate the same.

- 6.166 These plots are: 05/06, 05/07, 05/08, 05/09, 06/02, 06/04, 06/05, 06/06, 06/07, 08/05, 08/06, 08/07, 08/08, 08/09, 08/10 and 08/12. Plots 05/06, 05/07, 05/08, 05/09, 06/02, 06/04, 06/07, 08/05, 08/06, 08/07, 08/08, 08/09, 08/10 and 08/12 are also stated to require a new right for other purposes in addition.
- 6.167 The Category 1 owners of these plots are:
- Network Rail Infrastructure Limited
 - C.RO Ports Killingholme Limited
 - The Queen's Most Excellent Majesty in Right of Her Crown
 - Associated British Ports
- 6.168 The Category 2 owners are:
- Centrica Storage Limited
 - C.RO Ports Killingholme Limited
- 6.169 With unknown category 2 ownership on fourteen plots and with Category 2 ownership by:
- Fortis Bank (as mortgagee)
 - North Lincolnshire Council (in respect of public footpath No. 50)
 - Environment Agency (in respect of the river wall)
- 6.170 These plots are required to enable the applicant to carry out Works no. 3a, 3b and 3c and, thus, fulfil the test in s.122(2)(a) of the Planning Act 2008 as amended that they are required for the development to which the development consent relates.
- 6.171 By virtue of their direct functional relationship to the operational area, the ExA considers that they meet the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity.
- 6.172 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras 6.49 to 6.56, above.
- 6.173 The position of the Category 1 and Category 2 affected persons are covered individually below.
- Network Rail Infrastructure Limited*
- 6.174 The Revised Book of Reference [APP-109] shows that Network Rail Infrastructure Limited had Category 1 interests in plots 05/06, 05/07, 06/02, 08/06, 08/07, 08/08 and 08/09.
- 6.175 DLA Piper UK LLP submitted a letter on behalf of the applicant dated 4 March 2014 [SEC-050]. This stated that: *C.GEN hereby withdraws its applications in respect of Network Rail under sections 127 and 138 of the Planning Act 2008.*

- 6.176 This letter followed a submission from Network Rail (e-mail dated 27 February 2014) [SEC-051] which stated that:

Network Rail is satisfied that its interests in the Order Land are now adequately protected and wishes to withdraw its objections in respect of the Application and section 127 of the Planning Act 2008 with immediate effect.

- 6.177 The applicant states in its Responses to the Examining Authority's Third Written Questions (q.CA3/01 [REP-304]) that:

... negotiations have resulted in agreed protective provisions, a commercial agreement and the withdrawal of Network Rail's objection to the application. However, the agreement reached with Network Rail relates to the operation of the protective provisions, rather than an agreement to acquire land or an interest in land. As such, powers of compulsory acquisition will continue to be sought

Recommendation in respect of Network Rail Infrastructure Limited

- 6.178 As protective provisions have now been agreed and the application for a s127 certificate has been withdrawn the ExA considers that the Secretary of State can authorise CA of Network Rail Infrastructure's interests in plot numbers 05/06, 05/07, 06/02, 08/06, 08/07, 08/08 and 08/09.

C.RO Ports Killingholme Limited

- 6.179 The position of CPK, including a recommended addition to the DCO to protect CPK from CA, is dealt with in paras. 6.129 to 6.133, above.

The Queen's Most Excellent Majesty in Right of Her Crown

- 6.180 The Category 1 owners for plot 06/06 is shown in the revised book of Reference [APP-110] as being The Queen's Most Excellent Majesty in Right of Her Crown, ABP, and CPK.

- 6.181 The position on Crown Land is considered in paras. 6.58 to 6.79, above. That section recommends the insertion of an additional phrase to the end of Article 20(1) in the DCO which would have the effect of excluding interests held by the Crown from CA.

Associated British Ports

- 6.182 As stated above, in a letter dated 11 March 2014 [SEC-053], received by e-mail in advance of the closure of the Examination at the end of that day, the applicant's solicitors, DLA Piper stated that:

C.GEN will no longer be seeking powers of compulsory acquisition over ABP's land or interests in land. Pursuant to an amendment to Article 16(5) of the final draft Development Consent Order submitted by C.GEN on 11 March 2014, any land or interest in land owned for the time being by ABP shall be excluded from the powers of compulsory acquisition under Articles 16 – 27 of the Order.

- 6.183 The applicant's proposed Article 16(5)(b) [APP-114] and the ExA's recommended DCO now state that:

Articles 16 to 27 of this Order shall not apply to any land or interest owned by Associated British Ports (company number ZC000195).

Centrica Storage Limited

- 6.184 Centrica KPS Limited and Centrica Storage Ltd are wholly-owned subsidiaries of Centrica Plc., a statutory undertaker for the purposes of s.127(8) of the Planning Act 2008. The applicant has not made any application for s.127 Certificate in relation to the plots listed above (para. 6.166)

- 6.185 Centrica Plc. has consistently expressed concern about the applicant's proposals for CA in respect to their land. In summary, their Written Representation [REP-047] stated that:

Centrica is ... concerned that the compulsory acquisition of land for the proposed generating station site would ... negatively impact Centrica's statutory undertakings and operations in the area by removing / restricting access to its cooling water and condensate pipelines, and thereby detrimentally impacting KPS and / or CSL's operations.

- 6.186 Centrica's response to the ExA's second questions [REP-230] included the statement that Centrica relies upon its detailed representations in relation to these matters which were submitted with its written representations on 14 October 2013.

- 6.187 Schedule 8 of the final draft DCO [APP-114] contains draft Protective Provisions for the protection of Centrica Plc. (Part 5). However, at the time of the close of the Examination, this draft Provision was not agreed between Centrica Plc. and the applicant.

- 6.188 In its paper of proposed amendments to the draft Development Consent Order (DCO) [REP-315] the applicant had put forward an additional provision to the draft provisions but, in its response to that, dated 7 March 2014 [APP-310] Centrica Plc. states that:

Centrica does not agree to the new provision and does not believe that it adequately addresses its concerns relating to the impact of unfettered powers of compulsory acquisition on its interests and undertaking.

- 6.189 Centrica instead requested the re-insertion of the provision that had been deleted by the applicant from version 4 of the draft DCO [APP-087] that would have had the effect, in essence, that any acquisition of rights or overriding of easements should be done by agreement of the relevant protected person, which shall not be unreasonably withheld.
- 6.190 Such a provision does not occur in the applicant's final draft of the DCO [APP-114].

Recommendation in respect of Centrica Storage Ltd.

- 6.191 In the absence of any agreement on protective provisions with Centrica Plc. by the close of the Examination the s.127 Examiner is unable to conclude that the protective provisions proposed by the applicant are sufficient to avoid serious detriment to the carrying on of their undertakings. Therefore, the ExA is unable to recommend the grant of powers of CA in respect of Centrica Storage Ltd, in respect of plots 05/06, and 05/09.

Fortis Bank

- 6.192 Fortis Bank has not made any representations to the Examination nor appeared at any of the Hearings.
- 6.193 The applicant has stated in its Summary of C.GEN Killingholme Ltd oral representation relating to the Compulsory Acquisition Hearings held on 21-22 November 2013 [HR-052] that:

C.GEN is not currently dealing with Fortis Bank, which is a mortgagee whose interest is fully protected by provisions of article 16(5) of the draft DCO since it is a mortgagee in respect of CPK.

North Lincolnshire Council

- 6.194 NLC only has interests in respect of footpaths. This is not a CA matter. The ExA's recommendations on footpaths are set out at paras. 4.286 and 4.293.

The Environment Agency

- 6.195 In its response to the ExA's second round of questions [REP-219] the Environment Agency (EA) states that:

There are sea defences within the application site; however, this land has not been acquired for the purposes of the Environment Agency's undertaking. It is owned by a third party/parties and the Environment Agency has no interest in the land.

- 6.196 The applicant states in its Responses to the Examining Authority's Third Written Questions (q.CA3/01 [REP-304]) that, in the light of these representations, it is withdrawing its applications in respect of s.127 and s.138 of the Planning Act 2008, as amended.

- 6.197 However, the Revised Book of Reference [APP-109] still shows Category 1 interests for the EA in respect of plots 06/04, 06/05, 06/06, 06/07.

Recommendation in respect of the Environment Agency

- 6.198 As section 7 of this report shows, the ExA's final recommended draft DCO (see Appendix E) contains agreed Protective Provisions in respect of the EA. Notwithstanding this, the ExA recommends that references to the EA should be removed from the final Book of Reference in respect of plots 06/04, 06/05, 06/06, 06/07 in order to reflect the EA's statement quoted above that it has no interest in the land and to remove any uncertainty as to the EA's position in this respect.

Summary Recommendation

- 6.199 The preceding paragraphs show that, in respect of plots 05/06, 05/07, 05/08, 05/09, 06/02, 06/04, 06/05, 06/06, 06/07, 08/05, 08/06, 08/07, 08/08, 08/09, 08/10 and 08/12 related to infrastructure for the transmission of water, the ExA is recommending that powers of CA are granted only in respect of Network Rail Infrastructure.

Working, laydown and construction areas

- 6.200 The Book of Reference dated 10 February 2014 [APP-110] identifies both the acquisition of both permanent and temporary rights for this purpose.

- 6.201 The revised Statement of Reasons [APP-105] states in para 6.14 that:

The Construction Laydown areas will provide for the storage of construction materials and assembly of large plant items, as well on site and project offices and temporary parking. Should the construction of the Gasification Plant proceed these activities cannot be accommodated within the Operations Area. In that case, C.GEN will need to use land within the CPK port estate.

- 6.202 First, the Book of Reference dated 10 February 2014 [APP-110] identifies three plots which, in whole or in part, are stated to require a new right 'to provide a working area and construction site for the purposes of the authorised development'.

- 6.203 These plots are: 06/08, 06/09 and 08/04. Plot 08/04 is also stated to require a new right for other purposes in addition.

- 6.204 The Category 1 owners of these plots are:

- C.RO Ports Killingholme Limited
- The Queen's Most Excellent Majesty in Right of Her Crown
- Associated British Ports

- 6.205 With unknown category 2 ownership on three plots and with Category 2 ownership by:
- Shell UK
 - Fortis Bank (as mortgagee)
- 6.206 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras. 6.49 to 6.56, above.
- 6.207 The ExA notes that, whilst the Book of Reference does not specify that the rights to be acquired are temporary, the relevant Land Plan [APP-004] shows plots 06/08 and 06/09 as 'temporary land' and that they are listed in Schedule 5 of the applicant's final draft DCO [APP-114] which lists 'Land of which temporary possession may be taken'.
- 6.208 These plots are related to works listed in schedule 1 of the ExA's recommended DCO and, thus, fulfil the test in s.122(2)(b) of the Planning Act 2008 as amended in that they are required to facilitate or are incidental to that development. By virtue of their direct relationship to the operational area, the ExA considers that they meet the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity.
- 6.209 However, the position of the Category 1 and Category 2 affected persons are covered individually in the previous two sub-sections.
- 6.210 In particular, the position on Crown Land is considered in paras 6.58 to 6.79, above. That section recommends the insertion of an additional phrase to the end of Article 20(1) in the DCO which would have the effect of excluding interests held by the Crown from CA.
- 6.211 The particular positions on CPK and ABP is considered in paras. 6.129 to 6.133 and 6.182 and 6.183 respectively.
- 6.212 In summary, the ExA has recommended amendments to the DCO which would have the effect of removing CPK and the Crown from the application of Articles related to CA, and the applicant has proposed an amendment, which the ExA has recommended be incorporated into the DCO that would have the same effect in relation to ABP. The applicant has also stated, as quoted in para 6.193, above that interest of Fortis Bank is fully protected by provisions of Article 16(5) of the draft DCO.

Conclusion on plots 06/08, 06/09 and 08/04

- 6.213 Taking into account the position described above for CPK, The Queen's Most Excellent Majesty in Right of Her Crown, Fortis Bank and ABP, the ExA recommends the removal of plots 06/08 and 06/09 from the list of those for which an application for CA of rights is approved to reflect the fact that the only parties who are

shown to have an interest in the land related to those plots are recommended to be excluded from the powers of CA.

Recommendation on plots 06/08, 06/09 and 08/04

- 6.214 Taking into account the evidence presented, the ExA recommends that the application for CA of rights in plot 08/04 be granted.
- 6.215 Second, the Book of Reference dated 10 February 2014 [APP-110] identifies three plots which in whole are stated to require a new right for 'a temporary right to provide a working area, laydown area and construction site for the purposes of the authorised development'.
- 6.216 These plots are: 05/10, 06/03 and 08/11
- 6.217 The Category 1 owners of these plots are:
- C.RO Ports Killingholme Limited
 - Network Rail Infrastructure
- 6.218 With unknown category 1 and unknown category 2 ownership on three plots and with category 2 ownership by:
- Fortis Bank (as mortgagee)
 - North Lincolnshire Council (in respect of public footpath No. 50)
 - Environment Agency (in respect of the river wall)
- 6.219 First, it is necessary in relation to these plots to establish the nature of the temporary right. Article 25 – 'Temporary use of land for carrying out the authorised development' - of the ExA's recommended draft DCO (see Appendix E) states that:
- The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 5 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article (16) of this Order.*
- 6.220 Article 25 seeks to authorise temporary possession of land for the purpose *inter alia* of providing a working area, laydown area and construction site on plots as listed in Schedule 5. Article 25 would authorise the applicant both to enter on and take temporary possession of the land but also to construct temporary or permanent works (subject to requirements including to reinstate and compensation)
- 6.221 Article 25 should be read alongside Article 20 which seeks to authorise CA of new rights described in the book of reference.

Temporary rights for the purposes of providing a working area, laydown and construction areas are described in the book of reference in relation to plots 05/10, 06/03, 06/08, 06/09, 08/11. These plots are also identified in schedule 5 and benefit from the powers under Article 25.

- 6.222 By virtue of this Article, the ExA considers that the temporary acquisition of rights meet the tests relating to proportionality and reasonableness.
- 6.223 The tests in s.122(2)(b) of the Planning Act 2008 as amended are fulfilled in that they are required to facilitate or are incidental to that development.
- 6.224 The position of the Category 1 and Category 2 affected persons are covered individually in the preceding sub-sections.

Recommendation on plots 05/10, 06/03 and 08/11

- 6.225 Whilst the ExA is satisfied that temporary rights for providing working, laydown and construction areas under Article 25 are justified to enable the applicant to carry out the development, arguably (as the applicant is not seeking the CA of permanent rights in the land for these purposes) it is not necessary for temporary rights in respect of these plots to be repeated in the Book of Reference.
- 6.226 Nonetheless, the inclusion of these plots in the Book of Reference can be justified against the tests set out in statute.
- 6.227 The ExA, therefore, recommends that the application for the CA of temporary rights in respect of plots 05/10, 06/03 and 08/11 be accepted as, in respect of these plots, the tests set out in statute and in guidance have been met.

Fuel unloading

- 6.228 The Book of Reference dated 10 February 2014 [APP-110] identifies eight plots which, in part, are stated to require a new right:

to install and keep installed, maintain, and operate fuel unloading facilities at Killingholme Haven including a conveyor for the transport of solid fuel and other substances between the Killingholme Haven and the authorised development required for the authorised development and rights of access to install and keep installed, maintain and operate the same.

- 6.229 These plots are: 06/07, 08/05, 08/06, 08/07, 08/08, 08/09, 08/10 and 08/12. All these plots are also stated to require a new right for other purposes in addition.
- 6.230 The Category 1 owners of these plots are:

- C.RO Ports Killingholme Limited
 - Network Rail Infrastructure Limited
 - Associated British Ports
- 6.231 With unknown category 2 ownership on seven plots and with Category 2 ownership by:
- Fortis Bank (as mortgagee)
 - North Lincolnshire Council (in respect of public footpath No. 50)
 - Environment Agency (in respect of the river wall)
- 6.232 These plots are related to works 6a and 6B and, thus, fulfil the test in s.122(2)(a) of the Planning Act 2008 as amended that they are required for the development to which the development consent relates.
- 6.233 By virtue of their direct relationship to the operational area, the ExA considers that they meet the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity.
- 6.234 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras. 6.49 to 6.56, above.
- 6.235 The position of the Category 1 and Category 2 affected persons are all covered individually in previous sub-sections. It should be noted that, as covered in paras 6.66 to 6.67 and 6.127 to 6.133 respectively, ABP and CPK are protected from the provisions in the DCO relating to CA.

Recommendation

- 6.236 Taking into account the evidence presented, the ExA recommends that the application for CA of rights in plots 06/07, 08/05, 08/06, 08/07, 08/08, 08/09, 08/10 and 08/12 be granted subject to the insertion of an addition to draft Article 16(5)(a) in the DCO as recommended in para. 6.133, above and the addition of Article 16(5)(b) in the DCO as recommended in para. 6.67, above.

Railway connection

- 6.237 The Book of Reference dated 10 February 2014 [APP-110] identifies four plots which, in whole or in part, are stated to require a new right:
- to install and keep installed, maintain, and operate a railway connection to the existing Killingholme Branch Line required for the authorised development and rights of access to install and keep installed, maintain and operate the same.*
- 6.238 These plots are: 08/05, 08/06, 08/07 and 08/08. All these plots are also stated to require a new right for the transmission of water

(see paras. 6.165 to 6.199, above) and for fuel unloading (see paras. 6.228 to 6.236, above).

6.239 The Category 1 owners of these plots are:

- C.RO Ports Killingholme Limited
- Network Rail Infrastructure Limited

6.240 The Category 2 owners of these plots are:

- C.RO Ports Killingholme Limited

6.241 With unknown category 2 ownership on three plots and with Category 2 ownership by:

- Fortis Bank (as mortgagee)

6.242 These plots are related to works no. 5 and, thus, fulfil the test in s.122(2)(a) of the Planning Act 2008 as amended that they are required for the development to which the development consent relates.

6.243 By virtue of their direct relationship to the operational area, the ExA considers that they meet the tests set out in guidance relating to legitimacy, proportionality, reasonableness, and necessity.

6.244 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras 6.49 to 6.56, above.

6.245 The position of the Category 1 and Category 2 affected persons are covered individually in the previous sub-sections. It should be noted that, as covered in paras 6.66 to 6.67 and 6.127 to 6.133 respectively, ABP and CPK are protected from the provisions in the DCO relating to CA.

6.246 None of the owners listed above is a statutory undertaker subject to an application for certificates under s.127 of the Planning Act 2008 as amended.

Recommendation

6.247 Taking into account the evidence presented, the ExA recommends that the application for acquisition of rights in respect of a railway connection for plots 08/05, 08/06, 08/07 and 08/08 be granted subject to the insertion of an addition to draft Article 16(5)(a) in the DCO as recommended in para. 6.133, above and the addition of Article 16(5)(b) in the DCO as recommended in para. 6.67, above.

THE APPLICANT'S CASE FOR ACQUISITION OF LAND AND RIGHTS NOT FOR DEVELOPMENT APPLIED FOR

- 6.248 This part of this section secondly deals with those plots for which the stated purpose is one that is not covered by relevant works applied for. These relate to the gas and the grid connector corridors.
- 6.249 Before considering the plots related to the gas connector and the grid connector separately, it is necessary to consider two issues which apply to all these plots. These issues are a) applying for CA without applying for the works on relevant plots, and b) applying for CA within order limits when it is known that not all the land will be used.
- 6.250 These issues are both important in that they are related to tests in statute and in guidance which the ExA and the decision maker need to be satisfied that they have been met.

Requesting CA without applying for the works on relevant plots

- 6.251 The applicant has applied for powers of CA on 29 plots - 03/01, 03/02, 03/03, 03/04, 03/05, 03/06, 03/07, 03/08, 03/09, 04/01, 04/02, 04/03, 04/04, 04/05, 04/06, 04/07, 04/08, 04/10, 05/01, 05/03, 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05 - without including the works for which these plots are stated to be required in the application for a DCO.
- 6.252 First it is worth noting that DLA Piper UK LLP, solicitors to the applicant, sought advice under s.51 of the Planning Act 2008 in advance of the application being made as to whether:

an application for a development consent order (DCO) [can] seek powers of compulsory acquisition over land required for a gas connection to the existing national transmission system without seeking authorisation for the construction and operation of the gas connection itself?

- 6.253 The full PINS advice under s.51 is at <http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/north-killingholme-power-project/?ipcsection=advice&ipcadvice=ce5aef206a> but it stated that:

The Planning Act does not prevent provision being made for matters which will not in themselves need or be granted development consent and does not arguably exclude the compulsory acquisition of land in the circumstances you describe. The advice refers to the tests established in legislation and in guidance – the tests that are applied in this section - but goes on to state that: the DCO may make provision for compulsory acquisition of the gas connector land if it can be demonstrated

that the compulsory acquisition of that land is related or ancillary to the development for which consent is sought.

6.254 The ExA's first round of questions [DEC-005] asked for further explanation and a legal submission justifying this approach. These were provided in the applicant's Response to the ExA's First Written Questions [REP-071]. In that response, the applicant referred to Section 4.9 in NPS EN-1 as part support for its approach.

6.255 Para 4.9.2 of EN-1 allows for the possibility of separate applications for elements of the proposal:

The Planning Act 2008 aims to create a holistic planning regime so that the cumulative effect of different elements of the same project can be considered together. The Government therefore envisages that wherever possible, applications for new generating stations and related infrastructure should be contained in a single application to the IPC or in separate applications submitted in tandem which have been prepared in an integrated way. However this may not always be possible, nor the best course in terms of delivery of the project in a timely way, as different aspects may have different lead-in times and be undertaken by different legal entities subject to different commercial and regulatory frameworks (for example grid companies operate within OFGEM controls). So the level of information available on the different elements may vary. In some cases applicant(s) may therefore decide to put in an application that seeks consent only for one element but contains some information on the second. Where this is the case, the applicant should explain the reasons for the separate application.

6.256 With reference to the final sentence, above, the applicant has stated in its response to the ExA's first written questions [REP-071] that a reason for the separate application is that:

The Gas Connection and the Electrical Grid Connection [...] fall to be dealt with under the town and country planning legislation and not the Planning Act 2008 regime because they are not, in themselves, NSIPs.

6.257 However, the applicant has also argued that the connector corridors are related, or ancillary to the development. Thus, the ExA considers that these elements could have been applied for under s.115 of the Planning Act 2008 which provides that, in addition to the development for which development consent is required under Part 3 of the Act ("the principal development"), consent may also be granted for associated development. Associated development is defined in the Planning Act as development which is associated with the principal development.

6.258 The ExA considers that the fact that the connector works are not, in themselves, NSIPs is not, in itself, a reason for not applying for

these works under the Planning Act 2008, as amended and, indeed, may be seen to run counter to the policy in EN-1 concerning a holistic planning regime quoted in para. 6.255, above.

6.259 The ExA has also had regard to para. 4.9.3 of EN-1 which states:

If this option is pursued, the applicant(s) accept the implicit risks involved in doing so, and must ensure they provide sufficient information to comply with the EIA Directive including the indirect, secondary and cumulative effects, which will encompass information on grid connections. The IPC must be satisfied that there are no obvious reasons why the necessary approvals for the other element are likely to be refused. The fact that the IPC has decided to consent one project should not in any way fetter its subsequent decisions on any related projects.

6.260 This establishes two tests, first that sufficient information to comply with the EIA Directive including the indirect, secondary and cumulative effects, which will encompass information on grid connections is provided and secondly that there are no obvious reasons why the necessary approvals for the other element are likely to be refused.

6.261 On the first of these, relating to information to comply with the EIA Directive, the ES [APP-009] does not cover the Gas Connection or Electrical Grid Connection with para. 2.1.1. stating that:

[...] the Application Site should be understood as comprising three main elements: the Principal Project Area; the Electrical Grid Connection Land; and the Gas Connection Land. [...] The Project that is the subject of this ES will be constructed in the area of land described in this ES as the Principal Project Area.

6.262 The ES goes on to state, in paras 4.8.8 and 4.9.13 that;

The DCO Application does not seek development consent for the construction and operation of the [Electrical Grid] [Gas] Connection. This will need to be subject to its own application for planning permission via North Lincolnshire Council. This application will be supported by information addressing the environmental effects of the [Electrical Grid] [Gas] Connection, if necessary comprising a full EIA. As such, it will be necessary to have considered the cumulative environmental effects of the [Electrical Grid] [Gas] Connection alongside those of the other elements of the Project. Since the Project cannot operate without the [Electrical Grid] [Gas] Connection, it may not proceed without such assessments of the cumulative effects. As such, the environment is protected in relation to the consequences of the Project as a whole.

6.263 Cumulative Impact Assessments of Gas and Grid Connections were addressed as follows in the Application Documents and in the Examination:

- Sections 4.8.8 and 4.9.13 of the ES [APP-009] which were subject to first round questions EIA19 , EIA25 and EIA27 [DEC-005] and the applicants response [REP-089];
- Sections 16.4.6 and 16.4.10 of the ES [APP-009] which were subject to first round questions EIA33 and EIA34 [DEC-005] and the applicants response [REP-089];
- Section 16.4 and Tables 16.7 and 16.8 of the ES [APP-009] explicitly addressed Cumulative Impact Assessments of Gas and Grid Connections and judged them to be not significant during construction and operation. NE and NLC did not query this conclusion in the examination.

6.264 The ExA was satisfied that Cumulative Impact Assessments of Gas and Grid Connections were addressed in the ES [APP-009] and explained adequately by the applicant in the examination [REP-089] [HR-013].

6.265 The second test – that there are no obvious reasons why the necessary approvals for the other element are likely to be refused – was examined, amongst other ways, through a question in the ExA's first written questions [DEC-005] in which the applicant was asked to provide its analysis of the national and local planning policy context within which any application under town and country planning legislation will be made and a demonstration of how this context re-assures the applicant that permission would be granted (q. CA10(iii)).

6.266 The response to this was full and set out a detailed exposition of national and local policy identifying relevant information related to the connector corridors against each of the national and local policies identified. That study concludes in para. 11.21 [REP-071] that:

The above analysis demonstrates that the proposal is compatible with national and local planning policy and that there is no reason identified, why planning permission would not be granted for the Connections.

6.267 Understandably, the representative of North Lincolnshire Council (NLC) at the hearing did not wish to fetter the discretion of the local planning authority and so was unable to provide comfort as to any possible outcome of a planning application or applications in respect of the gas and grid connectors and associated infrastructure.

6.268 The applicant further argued in the November Compulsory Acquisition hearing that:

By that stage in the process, C.GEN would have the right by compulsion to acquire the rights necessary to lay the pipework and the consequence of a refusal of planning permission for the connections would be that a consented nationally significant power station project would be prevented from proceeding. That would be a material planning consideration of very great weight in favour of the grant of planning permission for the connection routes, one which would certainly be of sufficient weight to overcome any residual objections which might be advanced by either Able or SMart Wind. (Applicant's Written Summary of Oral Representations made at the Issue Specific Hearing - Compulsory Acquisition - 21-22 November 2013 [HR-125])

6.269 The ExA considers that it is not possible to second guess the deliberations of the local planning authority, which will be considering the development plan as a key material consideration.

6.270 The applicant has also stated in its *Written Summary of Oral Representations made at the Issue Specific Hearing - Compulsory Acquisition - 11 - 13 February 2014* [HR-125] that:

Phase 1 environmental studies are complete (or near complete) and do not indicate any significant obstacle to development which would give rise to "any obvious reason" why permission would be refused.

6.271 Whilst a summary of the position was given by the applicant at the February CA hearing, the Phase 2 studies had not been completed by the close of the Examination.

6.272 Given the above, the ExA does not find itself satisfied that there are no obvious reasons why the necessary approvals for the other element are likely to be refused.

6.273 This test is different from, but related to, the test set in guidance and mentioned specifically in the PINS advice under s.51 referred to in para. 6.253, above. This is contained in the DCLG publication *Planning Act 2008: guidance related to procedures for the compulsory acquisition of land* published in September 2013 and states that:

applicants will need to be able to demonstrate that any potential risks or impediments to implementation of the scheme have been properly managed;

and that:

they have taken account of any other physical and legal matters pertaining to the application, including the programming of any necessary infrastructure accommodation works and the need to obtain any operational and other consents which may apply to the type of development for which they seek development consent.

6.274 In applying these tests, the ExA notes first that not only was an application under town and country planning or other legislation not made before or during the application but that the applicant has stated in its *Written Summary of Oral Representations made at the Issue Specific Hearing - Compulsory Acquisition - 11 - 13 February 2014* [HR-125] that:

C.GEN remains on course to submit planning applications for the gas and electrical grid connections at the end of Q3 2014.

6.275 Thus, any opportunity for the ExA either to assure ourselves of the nature and limits of such an application or applications, let alone to take into account the outcome of them, has been obviated by the timescale chosen by the applicant.

6.276 There is, therefore, no certainty as to when an application will be made and determined, no indication as to how any application will relate to the land within the order limits and no certainty as to the outcome of that application or applications both in terms of whether permission will be granted and whether conditions will be imposed.

6.277 The ExA concludes that, even having decided for the reasons given not to include the connector corridors within the works applied for but to apply for the works associated with them under separate legislation, the optimum way of properly managing any potential risks or impediments to implementation of the scheme would have been to have made the separate applications within a timescale that, at a minimum, allowed the ExA to see the nature, scale and extent of the application and, preferably, to have submitted the application at a time that would have allowed the ExA to have seen the local planning authority's decision before the end of the Examination.

6.278 The ExA concludes that, in not taking either of these approaches, the applicant has failed to demonstrate that any potential risks or impediments to implementation of the scheme have been properly managed.

Applying for CA within order limits when it is known that not all the land will be used

6.279 In considering this issue, the ExA has had particular regard to the tests set in s.122(2)(a) and (b) that the land is required for the development to which the development consent relates, or is required to facilitate or is incidental to that development and the tests in guidance that the land to be acquired is no more than is reasonably required for the purposes of the development; the land to be taken is no more than is reasonably necessary for that purpose; and that it is proportionate.

6.280 As stated above, two applications for changes to the Order Limits in relation to the grid and gas connection corridors during the

course of the Examination meant that the number of plots involved was reduced by 57 and the number of affected parties by 30. This was mainly due to the removal of corridors as, according to the applicant, connection points to the grid and gas supply became more certain.

- 6.281 However, a related issue is that of the width of the corridors over which CA powers are sought. The initial application documents accepted that the precise location of the grid connection itself will be subject to detailed engineering and site investigation works and that the width of the corridor comprising the grid connection land is being promoted to allow for appropriate flexibility for the siting of the Grid Connection. (paras. 6.21 and 6.22 of the *Statement of Reasons* [APP-052])
- 6.282 The rationale for this approach was examined in both the November 2013 and February 2014 Compulsory Acquisition Hearings and through the ExA's written questions [DEC-005] [DEC-010]. It should be noted that, following the successive changes to the Order Limits during the course of the examination, the width of the gas connector corridor has been reduced from approximately 150 metres to approximately 60 metres (para 6.34 of the *Amended Statement of Reasons* [APP-104]).
- 6.283 However, the revised Gas Connection Statement dated 24 January 2014 [APP-094] states that:
- The working/construction width for the pipeline will be up to 30m. The pipeline to be laid is likely to be less than 0.4m in diameter. Pre-construction surveys are likely to be conducted aurally although some route-walking may be required. Once the Gas Connection is operational, a maintenance strip of up to 12m will be required.*
- 6.284 The ExA notes that, in the case of the Gas Connection corridor, the strip for which powers are sought remains up to twice the width of the land that will eventually be required even temporarily for working and construction and some five times that eventually required for maintenance.
- 6.285 In para 3.3.6 of its *Written Summary of Oral Representations made at the Issue Specific Hearing - Compulsory Acquisition - 11 - 13 February 2014* [HR-125] C.GEN has stated that:
- it will not acquire interests over all the land included within the Order limits. By the time that the grid and gas connections are commenced a final route alignment and detailed design will have been prepared. At this stage C.GEN will serve the necessary notices to treat, or of vesting, to compulsorily acquire the relevant land. It will only acquire that land necessary to construct and operate the grid and gas connections. The wider area required for*

construction will be acquired only temporarily. It will not acquire all the land included within the Order limits.

6.286 In its response to the ExA second written questions [REP-176], the applicant states that:

The Secretary of State may be assured that all of the land within the final order limits will be required for final micrositing, construction and the permanent easement for the Project. This is because the limits will be narrowed sufficiently to give certainty as to the land that will be affected. The area which will be required will allow flexibility for micrositing within the established practices for the gas and electricity industries.

6.287 We do note that Article 16.—(1) of the draft North Killingholme DCO [APP-114] does state that the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.

6.288 However, we also note that, having stated that the working/ construction width for the pipeline will be up to 30 metres but that once the Gas Connection is operational, a maintenance strip of up to 12 metres will be required, the revised Book of Reference does not differentiate between permanent and temporary rights over a strip of land that may be some 18 metres wide.

6.289 As shown above, the applicant states that this approach to micrositing is common for infrastructure projects of this nature and cites a number of projects in its *Summary of oral representations relating to the CAH held on 11-13 Feb 2014* [HR-125], including the Rookery South Resource Recovery Facility and the Felixstowe branch line at Ipswich, where this approach had been used.

6.290 The ExA notes that, in the case of Rookery South, the applicant states that sufficient powers were included to allow sufficient space for horizontal direct drilling to be carried out beneath new highway infrastructure. The ExA does not consider that is analogous to the siting of two corridors one of which may be over 3.5 kilometres long and, as stated above, have an average width of some 60 metres.

6.291 In the case of the Ipswich Rail Cord, the ExA stated in paras 5.86 and 5.87 of its report that:

The land to be acquired outright is relatively tightly drawn along the railway consistent with railways generally. Whether there was a compelling case in the public interest to enter onto and take temporary possession of the full extent of a number of other plots (1, 7, 9 and 51) was the subject of written questions and further questions from the Examining authority at the Hearings. In each case the land was clearly necessary, often due to constraints in other locations around the site.

This demonstrated, amongst other things, that the applicant has indeed a clear idea about how it intends to use all the land.

6.292 The ExA does not consider that the description in the paragraph above is analogous to that quoted in para. 6.285, above.

Conclusion

6.293 The ExA concludes that, whilst the approach set out in para. 6.286, above, may be standard in respect of the process towards micro-siting is concerned, the applicant has not demonstrated conclusively that it is appropriate to leave the final stages of this process until after powers of CA have been granted and thus the applicant has not demonstrated conclusively that all the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development.

6.294 To summarise, the ExA concludes that, in the case of the plots related to the Electrical Grid and Gas Connection Corridors:

- the applicant has failed to demonstrate that any potential risks or impediments to implementation of the scheme have been properly managed
- the applicant has not demonstrated conclusively that all the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development.

Recommendation

6.295 For the above reasons, the ExA recommends that the application for CA for plots 03/01, 03/02, 03/03, 03/04, 03/05, 03/06, 03/07, 03/08, 03/09, 04/01, 04/02, 04/03, 04/04, 04/05, 04/06, 04/07, 04/08, 04/10, 05/01, 05/03, 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05 should be refused.

6.296 In making this recommendation, the ExA recognises and has taken into account the facts that we are, in part, relying on guidance as well as on statute and that the applicant has sought to respond to the concerns expressed by the ExA and other affected persons during the course of the Examination.

Specific plots

6.297 Having considered the two overarching issues above and having recommended overall that the application for CA in reaction to the electrical grid and gas connector corridors be refused, this section of the report now considers specific plots for which CA of plots is applied but for which the works are not included in the application for a DCO.

- 6.298 This is done to establish for the benefit of the Secretary of State whether or not there are further specific considerations to those outlined above affecting the granting the CA of rights over these plots.
- 6.299 These plots are grouped, below, under the four different purposes set out in in the revised Book of Reference [APP-110] summarised as being for; access to land, gas supply pipes and an above ground installation, gas supply pipes, and electricity transmission cables.

Access to land

- 6.300 The Book of Reference dated 10 February 2014 [APP-110] identifies four plots which are stated to be required for 'to construct, maintain and use an access to land required for the construction, operation and maintenance of gas pipelines and other apparatus'.
- 6.301 These plots are: 03/01, 03/02, 04/02, 04/03.
- 6.302 The Category 1 owners of these plots are:
- North Lincolnshire Council (in respect of adopted highway)
 - James Fussey
 - Mark Fussey
 - Christine England
 - Paul Wilkins
 - Richard Wilkins
 - Paul & Richard Wilkins trading as V. Wilkins & Sons
- 6.303 With unknown category 1 ownership on one plot and unknown category 2 ownership on all the plots.
- 6.304 These plots are related to the access to the gas pipelines and, thus, fulfil the test in s.122(2)(b) of the Planning Act 2008 as amended that they are required to facilitate or are incidental to that development.
- 6.305 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras. 6.49 to 6.56, above.
- 6.306 The position of the Category 1 affected persons are covered individually below.

North Lincolnshire Council in respect of adopted highway

- 6.307 The applicant states in its Responses to the Examining Authority's Third Written Questions (q.CA3/01 [REP-304]) that:

As it is not proposed to acquire land from NLC as highway authority, and NLC do not hold land affected by the powers of

compulsory acquisition under the Order in any other capacity, no ... negotiation is required. No final agreement is necessary. However, powers of compulsory acquisition of the plots identified in the Book of Reference continue to be sort in order to clean the title.

- 6.308 Whilst NLC contributed fully to the Examination on a range of issues it did not make any representations in respect of CA in relation to its roles in respect of an adopted highway.

Recommendation in respect of North Lincolnshire Council.

- 6.309 The ExA has already recommended that the application for powers of CA on these plots should be refused as it fails to meet tests related to risks and impediments and to the requirement for all the land.
- 6.310 However, should the Secretary of State not be minded to accept the overall recommendation against CA for plots on the gas connection corridor, the ExA recommends that the tests set out in guidance relating to legitimacy, and necessity are met. As NLC has not made any representations in respect of CA representations, the ExA recommends that the Secretary of State can authorise CA of NLC's interests in plot numbers 03/01, 03/02, 04/02 and 04/03.

Mr James and Mr Mark Fussey

- 6.311 Mr James Fussey made a relevant representation [RR-010] dated 19 June 2013 objecting to the CA of the land and W A Fussey (Farmers) Ltd made a written representation [REP-045] dated September 2013.
- 6.312 The applicant responded to this in an undated document [REP-147] placed on the website on 11 November 2013.
- 6.313 Mr James and Mr Mark Fussey gave evidence at the Compulsory Acquisition hearing held on 13 February 2014 and provided three photos to support their evidence [HR-138]. They also submitted additional material on 5 December 2013 [AS-11], 29 January [AS-12] and 28 February [AS-16] 2014
- 6.314 The points made in Messrs Fussey's evidence include:
- the existence of sub-soil pipelines across their farm had an adverse effect on crop yields (CA Hearing, 13 February 2014) [AS-016]
 - there exist a range of other possible pipes and routes for pipes [AS-011] [AS-016]
 - the proposals would have effects on drainage systems [AS-012] (CA Hearing, 13 February 2014) [AS-016]
 - potential damage to the soil through construction (CA Hearing, 13 February 2014) [AS-016]

6.315 The applicant's responses to those points include statements that:

- *the limitation of the depth of works above the Gas Connection is noted as a safety issue in order to protect the integrity of the high pressure gas pipeline. This is a common measure adopted by those who install and/or manage underground infrastructure. However "normal farming techniques" will be able to continue above the pipeline [REP-147]*
- *C.GEN, as per industry practice, will fully consult affected landowners and occupiers on all aspects of land drainage restoration. Where it will be of benefit, 'cut-off' drainage can be installed before construction. [REP-147]*
- *The alternative pipes referred to by Messrs Fussey have been considered but are not suitable for reasons including their age and the pressures at which they operate. [REP-147]*
- *most of the concerns of the landowners, along with any other risks, should be adequately dealt with as part of the planning application process [HR-125]*

6.316 Messrs Fussey's particular position in relation to the Above Ground Installation (AGI) is considered in paras 6.339 to 6.346, below.

Mrs Christine England

6.317 Mrs England was represented during the Examination by Mr Caley of Leonards. Mr Caley made a relevant representation on behalf of Mrs England dated 19 June 2013 and a written representation dated 3 February 2014. Further information was provided on 3, 7, 10, 28 February 2014 [AS-13, 14, 15, 17]. Mr Caley gave evidence on behalf of Mrs England at the Compulsory Acquisition hearing held on 13 February 2014 and summarised that evidence [HR-136].

6.318 The points raised in these representations and evidence include:

- the lack of consultation with Mrs England
- whether the gas connector could not go further north than the suggested route
- the status of existing pipes under Mrs England's land
- drainage issues
- the continuing use of existing farm tracks
- the need for a bond to protect Mrs England's interests; and
- proof that the applicant had a connection agreement.

6.319 Following on from s.87(3)(c) of the Planning Act 2008, as amended, the ExA did not enter into any discussion on levels of compensation and redacted any information that might relate to this from Mr Caley's submissions.

6.320 The applicant's responses to these points include:

- details of approaches made to Mrs England and her agent [HR-125]
- *the detailed concerns raised by Mr Caley are all matters which are suitable for and capable of resolution at the stage of the detailed planning permission for the gas connection [HR-125]*
- *article 8 of the draft DCO will provide adequate protection to Ms England regarding her right to receive compensation [HR-125]*
- *the minimum off take connection agreement process is to be commenced by C.GEN in the near future and it is expected to take around two and a half years from initiation to the completion of the connection [HR-125].*

Paul Wilkins, Richard Wilkins and Paul & Richard Wilkins trading as V. Wilkins & Sons

- 6.321 Paul Wilkins, Richard Wilkins and Paul & Richard Wilkins trading as V. Wilkins & Sons have not made any representations to the Examination and did not give evidence at any of the hearings.
- 6.322 The applicant did not provide a position statement on these parties in its Responses to the Examining Authority's Third Written Questions [REP-304]. Nor did it provide any information in its Responses to the Examining Authority's Second Written Questions [REP-176].
- 6.323 However, in para 1.4 of its response to the ExA's first round of written questions (CA03) [REP-071], the applicant stated that:

A meeting was arranged on the 10th October 2013 with the ... land agent, Tony Dale, who represents a number of landowners and occupiers to discuss the option agreements. It is understood that Mr Dale represents: Mr Pagram, the Reeves brothers, Ianie Spilman, the Wilkins farmers (10 individual farmers) and the Turners. The meeting was productive and draft Heads of Terms will be issued for all Mr Dales' clients in the week commencing 14 October 2013.

- 6.324 It is clear that, as with the laying and maintenance of underground pipes in agricultural land, the CA of land for that purpose would have an impact on the Wilkins' undertaking. Evidence has not been submitted to show the nature or extent of that impact. However, given that there will be some impact, the ExA has had to consider whether the public benefits would outweigh the private loss.

Conclusion in relation to Affected Persons

- 6.325 The ExA has concluded that, taking into account all the evidence presented to us, whilst Messrs Fussey, Mrs England and Paul Wilkins, Richard Wilkins and Paul & Richard Wilkins trading as V.

Wilkins & Sons would suffer private loss, there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

6.326 In coming to this conclusion, the ExA has had regard to and taken into account the tests set out in s.122(3) of the Planning Act 2008, in guidance and in Article 1 of the First Protocol to the European Convention on Human Rights, as embodied in the Human Rights Act 1998.

6.327 The ExA has already concluded, in para 6.46, above, that we do not consider that the overall need for the Project is an issue in relation to CA and that, therefore, the Project as a whole is in the public interest. In coming to this latter conclusion we have had regard to national policy on energy as set out in EN-1, notably para. 3.1, and EN-2.

Recommendation

6.328 The ExA has already recommended that the application for powers of CA on these plots should be refused as it fails to meet tests related to risks and impediments and to the requirement for all the land.

6.329 However, should the Secretary of State not be minded to accept the overall recommendation against CA for plots on the gas connection corridor, the ExA recommends that the tests set out in guidance relating to legitimacy and necessity are met.

Gas supply pipes and an Above Ground Installation - AGI

6.330 The Book of Reference dated 10 February 2014 [APP-110] identifies two plots which are stated to require a new right:

'to install and keep installed, maintain, and operate gas supply pipes and apparatus to connect to a high pressure gas transmission system for the supply of natural gas and an above ground installation required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same'.

6.331 These plots are: 03/03 and 03/04. These differ from the other plots listed below in relation to the gas pipeline in that they are stated to require a new right for an AGI.

6.332 The Category 1 owners of these plots are:

- James Fussey
- Mark Fussey

6.333 With unknown category 1 and 2 ownership on both plots and with Category 2 interest by:

- North Lincolnshire Council (in respect of public footpath No. 76)

6.334 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras. 6.49 to 6.56, above.

6.335 The position of Mr James and Mr Mark Fussey are discussed in para. 6.314 to 6.318, above.

6.336 The ExA considers that the factors relating to private loss and their rights under the Human Rights Act 1998, are particularly apposite where the AGI is involved.

6.337 The first issue is the loss of land to Messrs Fussey. This was examined in particular at the 13 February 2014 CA hearing with the ExA asking why the revised Book of Reference and the revised Land Plan sheet No. 3 only indicates the acquisition of rights for plots 03/03 and 03/04, whereas the applicant's response to a representation from Mr Fussey stated that: *the Above Ground Installation ("AGI"), [...] will result in the loss of a relatively small area of land. (para 2.4).*

6.338 In the Summary of the C.GEN's Case [HR-125] the applicant stated that:

This is a matter of terminology. C.GEN seeks the limited rights it requires, namely to install and maintain a pipeline and an AGI. The effect of those rights, in practical terms, is that Mr Fussey will lose the use of some of his land.

6.339 Thus, Messrs Fussey will be deprived of an area used for grazing and for cropping. The applicant has stated that:

the land required for the AGI is relatively small area of land, which is estimated to be 60x30m in area and Mr Fussey will be denied the use of that land once it is constructed [HR-125].

6.340 The ExA notes that, one of the assumptions behind the estimate of the possible cost of CA contained in response to CA2/31(b) [REP-176] is that;

The final installation depth of both the gas route and the electricity route will be sufficient to allow arable farming to continue on the land above the routes;

and that the applicant's response to question ES07(b) [REP-087] stated that:

Mr Fussey's farm land is or has been in both pasture and arable use. Both uses will be capable of continuing following the installation of the Gas Connection.

- 6.341 The ExA do not consider that this will be the case in respect of the land required for the AGI.
- 6.342 In the Compulsory Acquisition hearing on 13 February 2014, Mr James and Mr Mark Fussey provided evidence relating to the current use of these plots both for arable and as grazing land. They also provided evidence on the value of land within these plots as a refuge for cattle during, for examples, periods of flooding.
- 6.343 This evidence countered the assertion of the applicants (in its *Written Summary of Oral Representations made at the Issue Specific Hearing on Compulsory Acquisition -11 - 13 February 2014* [HR-125]) that:

... the relevant land is directly adjacent to arable land which is also under the ownership of Messrs Fussey. Accordingly it would possible for Messrs Fussey to mitigate this loss if some of this arable land were to be reallocated as pasture land by moving the existing fence line.

Conclusion

- 6.344 The ExA recognises that the optimum site for an AGI needs to be where the feeder gas pipe joins the high-pressure main but that, in this case, the ExA concludes that the siting of the AGI will cause detriment to the livelihood of the farmers concerned and that Mr James and Mr Mark Fussey would suffer private loss and, thus, that their human rights would be interfered with.
- 6.345 The ExA has, therefore, considered in relation to Article 1 of the First Protocol to the Human Rights Convention, whether this is in the public interest and consider, for the reasons set out in para.6.325, above, that it is.
- 6.346 The ExA recognises that the connections to the gas and to the electrical grid are necessary for the operation of the project and, therefore, are, in themselves in the public interest.

Recommendation

- 6.347 The ExA has already recommended that the application for powers of CA on these plots should be refused as it fails to meet tests related to risks and impediments and to the requirement for all the land.
- 6.348 However, should the Secretary of State not be minded to accept the overall recommendation against CA for plots on the gas connection corridor, the ExA recommends that the tests set out in guidance relating to legitimacy and necessity are met.

Gas supply pipe

6.349 The Book of Reference dated 10 February 2014 [APP-110] identifies fourteen plots which are stated to require a new right:

to install and keep installed, maintain, and operate gas supply pipes to connect to a high pressure gas supply for the supply of natural gas required for or otherwise facilitating/ incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.

6.350 These plots are: 03/05, 03/06, 03/07, 03/08, 03/09, 04/01, 04/04, 04/05, 04/06, 04/07, 04/08, 04/10, 05/01 and 05/03.

6.351 The Category 1 owners of these plots are:

- James Fussey
- Mark Fussey
- Reeve Brothers (Farmers) Ltd.
- Christine England
- Paul Wilkins
- Richard Wilkins
- Paul & Richard Wilkins trading as V. Wilkins & Sons
- Kevin Dowle
- Melanie Smith-Spilman
- North Lincolnshire Council (in respect of adopted highway)
- Andrew Pagram
- Valerie Pagram
- Able Humber Ports

6.352 The ExA's overall and in general conclusions on the test relating to the exploration of all reasonable alternatives to CA are set out in paras. 6.49 to 6.56, above.

6.353 The position of the Category 1 affected persons are covered individually below.

6.354 The positions of Messrs Fussey, Mrs England and Paul Wilkins, Richard Wilkins, Paul & Richard Wilkins trading as V. Wilkins & Sons have been considered, above. The ExA considers that the same issues considered above are also relevant to plots required for gas supply pipes.

Reeve Brothers (Farmers) Ltd.

6.355 The position of Reeve Brothers (Farmers) Limited has been considered at para 6.148 and 6.149, above.

Kevin Dowle

6.356 Kevin Dowle has not made any representations to the Examination and did not give evidence at any of the hearings.

6.357 As at the close of the Examination, the applicant states (q.CA3/01 [REP-304]) that:

The draft option agreement and deed of grant have been agreed and it is hoped that signed copies can be exchanged before the close of the Examination on 11 March 2014. However, should agreement not be reached by the close of the Examination on 11 March 2013, C.GEN remains willing to negotiate even after the close of the Examination.

6.358 However, at the close of the Examination the applicant was waiting to exchange signed documents.

Melanie Smith-Spilman

6.359 Melanie Smith-Spilman or her agent have not made any representations to the Examination and did not give evidence at any of the hearings.

6.360 However, in para. 1.4 of its response to the ExA's first round of written questions (CA03) [REP-071], the applicant stated that:

A meeting was arranged on the 10th October 2013 with the ... land agent, Tony Dale, who represents a number of landowners and occupiers to discuss the option agreements. It is understood that Mr Dale represents: Mr Pagram, the Reeves brothers, Ianie Spilman, the Wilkins farmers (10 individual farmers) and the Turners. The meeting was productive and draft Heads of Terms will be issued for all Mr Dales' clients in the week commencing 14 October 2013.

6.361 The applicant stated in its Responses to the Examining Authority's Third Written Questions (q.CA3/01 [REP-304]) that:

Heads of Terms and draft agreements have been provided to the landowner. Contact has been attempted by email and by phone, but with no response.

Andrew Pagram and Valerie Pagram

6.362 In its Written Summary of Oral Representations made at the Issue Specific Hearing on Compulsory Acquisition on 11 - 13 February 2014 [HR-125] the applicant stated that:

Mr Pagram's land is no longer affected by the Project following refinement of the land subject to the application for powers of compulsory acquisition on 24 January 2014. His interest is therefore no longer noted in the book of reference.

6.363 Further, the applicant did not provide a position statement on these parties in its Responses to the Examining Authority's Third Written Questions [REP-304].

- 6.364 However, the revised Book of Reference dated 10 February 2014 [APP-110] does refer to plot 04/08 with the purpose of rights applied to be acquired being to install and keep installed, maintain, and operate gas supply pipes. The ExA has recommended that the application to acquire rights in respect of these plots be refused.
- 6.365 Andrew Neil Pagram and Valerie Anne Pagram have not made any representations to the Examination and did not give evidence at any of the hearings.
- 6.366 However, in para. 1.4 of its response to the ExA's first round of written questions (CA03) [REP-071], the applicant stated that:

A meeting was arranged on the 10th October 2013 with the ... land agent, Tony Dale, who represents a number of landowners and occupiers to discuss the option agreements. It is understood that Mr Dale represents: Mr Pagram, the Reeves brothers, Ianie Spilman, the Wilkins farmers (10 individual farmers) and the Turners. The meeting was productive and draft Heads of Terms will be issued for all Mr Dales' clients in the week commencing 14 October 2013.

Conclusion in respect of Kevin Dowle, Melanie Smith-Spilman, and Andrew Pagram and Valerie Pagram

- 6.367 In respect of Kevin Dowle, Melanie Smith-Spilman, and Andrew Pagram and Valerie Pagram, the ExA concludes, as we did in the case of Messrs Wilkins, above, that it is clear that, as with the laying and maintenance of underground pipes in agricultural land, the CA of land for that purpose would have an impact on the these undertakings. Evidence has not been submitted to show the nature or extent of that impact. However, given that there will be some impact, the ExA has had to consider whether the public benefits would outweigh the private loss.
- 6.368 The ExA has concluded that, taking into account all the evidence presented to us, whilst the affected persons considered above in this sub-section would suffer private loss, this would be outweighed by the public benefits that would be derived from the compulsory acquisition for the reasons stated in para. 6.325, above.

Recommendation

- 6.369 The ExA has already recommended that the application for powers of CA on these plots should be refused as it fails to meet tests related to risks and impediments and to the requirement for all the land. However, should the Secretary of State not be minded to accept the overall recommendation against CA for plots on the gas connection corridor, the ExA recommends that the tests set out in guidance relating to legitimacy and necessity are met. .

Able Humber Ports

- 6.370 The overall position of Able Humber Ports (Able) is considered in paras 6.139 to 6.147, above.
- 6.371 In its response to the second round of questions [REP-221] Able spelt out its estimate of the effect of the gas connector corridor on the consented ALP.

If the gas connection powers were to be granted over the entirety of the limits currently proposed by the Applicant then this would result in the sterilisation for development purposes of 33.48 acres (135,508 metres squared) of land. Able would not be able to develop the land affected by the powers unless and until those powers lapsed.

- 6.372 An expert witness on behalf of the applicant, Mr Dixon, gave evidence at the November 2014 CA Hearing that:

the worst case scenario is that one of the consented buildings may be required to be moved some 20 or 30m and that that no construction work has yet taken place on that land and that there appears to be adequate land in order to accommodate the minor relocation of one building which might prove necessary [HR-025].

- 6.373 As part of its response to q. CA2/09 [REP-175], published on the PINS website on 10 January 2014, the applicant provided a plan of a Building Proximity Review showing the proposed C.GEN gas pipe easement within the National Grid PADHI (HSE, planning advice for developments near hazardous installations) inner zone and some 7.5 metres from the north west corner of a proposed ALP building. An updated version submitted as an appendix to the applicant's comments on Able's second round responses [REP-251] showed the same distances, and bore the same date.
- 6.374 Able's response to this [REP-265] was that the plan does not address all its concerns and that it is concerned about access to the proposed building for maintenance and about possible future development.
- 6.375 The ExA notes that the written representation from the Health and Safety Executive (HSE) did not advise against the gas connection.
- 6.376 The applicant submitted draft protective provisions in respect of ALP. Able appended a marked up version of these provisions suggesting changes as part of response to the ExA's third round of written questions. However, it stated that (q. CA3/01) [REP-306]:

our submission of this revision is not intended to suggest that these provisions are sufficient to protect Able's interests. For the avoidance of doubt Able considers these protective provisions inadequate....

6.377 Finally, at the close of the Examination, Able stated in response to the ExA's third round of written questions (q. CA3/01) [REP-306] that:

... Able are in without prejudice negotiations concerning the areas of Able's land which would be subject to compulsory acquisition under the Order. However, the two parties remain a long way from mutually acceptable terms and it is not anticipated that agreement will be reached by 11 March 2014.

Conclusion in respect of Able Humber Ports

6.378 The ExA concludes that, in respect of plots 05/01 and 05/03, there remains a lack of agreement as to the impact of the gas connector on an element of a permitted scheme – the ALP. Both parties involved have sought over the period of the examination to take steps to reduce this uncertainty culminating in draft protective provisions submitted by the applicant [APP-114]. However, as shown above, the provisions are not agreed between both parties and, therefore, the ExA cannot be assured that a sufficient degree of protection is in place in respect of these plots.

Recommendation

6.379 The ExA has already recommended that the application for powers of CA on these plots should be refused as it fails to meet tests related to risks and impediments and to the requirement for all the land.

6.380 Should the Secretary of State not be minded to accept the overall recommendation against CA for plots on the gas connection corridor, the ExA recommends that the tests set out in guidance relating to legitimacy, and necessity are met. However, in the case of Able in respect of plots 05/01 and 05/03, the ExA recommend that, without agreed protective provisions, the Secretary of State cannot be satisfied that the proposed acquisition is proportionate.

Electricity transmission cables

6.381 The Book of Reference dated 10 February 2014 [APP-110] identifies nine plots which are stated to be required 'to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same'.

6.382 These plots are: 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05.

6.383 The Category 1 owners of these plots are:

- Centrica KPS Limited
- George Turner
- Simon Turner
- Able Humber Ports Limited
- E.ON UK plc.
- National Grid Electricity Transmission plc.
- E.ON UK Gas Limited

6.384 With unknown category 1 on two plots and unknown category 2 interests on all these plots and with Category 2 interests by:

- North Lincolnshire Council (footpath 77 + 86)
- E.ON UK plc.
- E.ON UK Gas Limited
- National Grid plc.
- National Grid Gas plc.
- Heron Wind Limited
- Optimus Wind Limited
- Centrica KPS Limited
- National Grid Electricity Transmission plc.
- Able Humber Ports Limited

6.385 The nine plots listed form a significant reduction from the plots listed for this purpose in the Book of Reference that accompanied the application as submitted on 25 March 2014 [APP-008]. The reason for this initial reduction is stated in the applicant's *Application for Withdrawal of Certain Land from the Proposed Order Limits dated 11 September 2014* [APP-069]:

Since submitting the Application, C.GEN has concluded a connection agreement with National Grid, which has confirmed that C.GEN may connect at the existing Killingholme substation. A Connection Agreement was entered into by National Grid and C.GEN on 30 April 2013 for this purpose. This solution is C.GEN's preferred option and, on that basis, it is no longer necessary for it to pursue any alternative option for the Electrical Grid Connection. Naturally, C.GEN has no wish to obtain powers to acquire land that it does not need. Consequently, the land identified for compulsory acquisition under the Order to install and maintain the Grid Connection to a proposed new connection point as identified in document 7.1 of the Application documents (the "Killingholme South Connection Point") is no longer required.

6.386 The size and number of plots were further reduced following the ExA's decision on 3 March 2014 [DEC-016] to accept the applicant's application, made on 24 January 2014 [APP-106] further to remove land from the order limits.

6.387 The interests of Centrica Plc., Able, and NLC have been considered in previous sections. The specific interests of the other affected persons are considered immediately below before a more general consideration of the issues surrounding these plots.

George Turner and Simon Turner

- 6.388 George Turner and Simon Turner have not made any representations to the Examination and did not give evidence at any of the hearings.
- 6.389 The applicant did not provide a position statement on these parties in its Responses to the Examining Authority's Second Written Questions on CA [REP-176] nor to our Third Written Questions [REP-304].
- 6.390 However, in para. 1.4 of its response to the ExA's first round of written questions (CA03) [REP-071], the applicant stated that:

A meeting was arranged on the 10th October 2013 with the ... land agent, Tony Dale, who represents a number of landowners and occupiers to discuss the option agreements. It is understood that Mr Dale represents: Mr Pagram, the Reeves brothers, Ianie Spilman, the Wilkins farmers (10 individual farmers) and the Turners. The meeting was productive and draft Heads of Terms will be issued for all Mr Dales' clients in the week commencing 14 October 2013.

- 6.391 In para. 2.18 of its Written Representation [REP-047] Centrica plc. states that:

the land located immediately to the east of the Killingholme Power Station, between it and the Project site is within Centrica's freehold ownership. This land is let on a farm business tenancy to George Turner, expiring on 1 October 2015.

and that:

The land to the east and south of the Killingholme power station however, is within Centrica's freehold ownership but is not held for purposes incidental to the power station. It is let on a farm business tenancy to George and Simon Turner. Utilising this route for the electrical grid connection would not have a lasting impact on land use on this land. There would be some temporary disruption to the land's current agricultural use, but once the cable has been installed this use could resume and continue without detriment to the agricultural operations and without restricting access to the cable for maintenance purposes

E.ON UK plc. and E.ON Gas

- 6.392 The applicant states in its Responses to the Examining Authority's Third Written Questions (q.CA3/01 [REP-304]) that:

E.ON has agreed in principle to provide access to Killingholme Substation over land in its ownership on terms to be agreed. C.GEN has provided a draft Option Agreement and Deed of

Easement to E.ON on 4 February 2014. No response has been received from E.ON as yet.

- 6.393 E.ON UK Plc. and E.ON UK Gas remain the subject of applications for certificates under s.127, and in respect of s.138, of the Planning Act 2008 as amended. This application is considered and a recommendation made to the Secretary of State for Energy and Climate Change in Appendix F of this report.
- 6.394 The s.127 Examiner has recommended that, in respect of these two bodies, a s.127 Certificate can be issued.

Heron Wind Limited

- 6.395 Heron Wind Limited remains the subject of applications for a certificate under s.127, and in respect of s.138, of the Planning Act 2008, as amended in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05. This application is considered and a recommendation made to the Secretary of State for Energy and Climate Change in Appendix F of this report.
- 6.396 In that appendix, the s.127 Examiner has recommended that, in the absence of agreed Protective Provisions, he cannot recommend the issuing of a certificate in relation to Heron Wind Ltd.

National Grid Gas plc. and National Grid Electricity Transmission

- 6.397 Both National Grid Gas plc. & National Grid Electricity Transmission remain the subject of applications for certificates under s.127, and in respect of s.138, of the Planning Act 2008 as amended, in respect of plots 09/02, 09/04 and 09/05 for National Grid Electricity Transmission and 07/08, 07/09, 07/11, 09/02, and 09/05 for National Grid Gas Plc. This application is considered and a recommendation made to the Secretary of State for Energy and Climate Change in Appendix F of this report.
- 6.398 It is worth recording in this section that these parties submitted a joint statement by C.GEN, National Grid Gas plc. & National Grid Electricity Transmission plc. ("National Grid") in relation to the current position between the parties at 17.49 on the day the Examination closed (11 March 2014) [AS-020]. This stated that:

C.GEN and National Grid have engaged constructively in relation to a number of matters relating to the interface of C.GEN's project with National Grid's land and apparatus. The two parties are engaged in documenting the outcome of their discussions. This has resulted in agreed protective provisions for the benefit of National Grid which have been included in the final DCO.

C.GEN and National Grid do not anticipate completing the remaining agreements required to resolve these interfaces prior to the close of examination today. However, both confirm that they

are continuing discussions and will report the position when agreement is achieved.

Whilst the parties understand that the matter may not be taken into account by the ExA, agreement would allow National Grid's representations and s127 applications to be withdrawn. This, and the parties' statement would be available to the Secretary of State in considering the application.

Optimus Wind Limited

- 6.399 Optimus Wind remains the subject of applications for a certificate under s.127, and in respect of s.138, of the Planning Act 2008 as amended. This application is considered and a recommendation made to the Secretary of State for Energy and Climate Change in Appendix F of this report.
- 6.400 In that appendix, the s.127 Examiner has recommended that, in the absence of agreed Protective Provisions, he cannot recommend the issuing of a certificate in relation to Optimus Wind Ltd.
- 6.401 One particular issue in respect of other parties is the concern expressed throughout the Examination by SMart Wind on behalf of Heron Wind Limited and Optimus Wind Limited. Heron Wind Limited and Optimus Wind Limited are the developers of Hornsea Offshore Wind Farms Project One and Project Two respectively. These projects are themselves current or potential Nationally Significant Infrastructure Projects (NSIPs). The overall position of these parties, as expressed by SMart Wind acting as their agent [REP-030], is that:

The C.GEN Order as proposed would, if granted, create a position of conflict and uncertainty in relation to Project One and Project Two which, if left unaddressed, will threaten the delivery of both projects.

- 6.402 Both parties have put forward suggestions as to how such a position of uncertainty and potential conflict may be resolved with, inter alia, the applicant suggesting the use of a 12 metre easement strip reserved by SMart Wind [REP-007], subsequently rejected by SMart Wind [REP-143] and SMart Wind offering that it would not object to compulsory powers being granted to C.GEN over a 3m strip running immediately adjacent to the eastern boundary of the Able option land [REP-143]. In addition, SMart Wind has noted that the adoption of the route to the east and the south of Centrica's Power station would reduce potential conflict.
- 6.403 The second change to the Order Limits accepted by the ExA on 3 March 2014 had the effect of further reducing the overlap between the C.GEN order limit land and that stated to be required for Hornsea Project 1. In the February 2014 CA Hearing, SMart Wind submitted that this reduced red line boundary compounds SMart

Wind's objections and continues to cause extreme difficulty for the Hornsea Projects [HR-141]. SMart Wind considered that there is no engineering justification for the CA powers which were being currently sought over 11m of land and that the Applicant would be entirely capable of installing and maintaining its grid connection in land to the east of the Centrica fence and entirely within Centrica land. [HR-141]

- 6.404 In its response to the second round of questions [REP-221] Able also pointed to the indirect effect of the electrical connection powers, stating that:

These powers are sought over a channel through which Able intends to reserve rights to lay extensive services for the benefit of the Able Logistics Park

- 6.405 The ExA note that Paras. 7.51 to 7.61 show that there are no Protective Provisions agreed jointly by the applicant and Able, Centrica Plc. or by Heron or Optimus Wind which could be used to protect Centrica's, Able's or Heron or Optimus Wind's interests in this respect.
- 6.406 There are a number of significant – and interrelated - issues concerning these plots, including, whether all reasonable alternatives to CA (including modifications to the scheme) have been explored in that an alternative route for electricity cables to connect to the existing Killingholme substation exists to the east of the existing Centrica Killingholme power station rather than to the west and whether the CA of rights will cause serious detriment to the carrying on of the undertaking of the Centrica Killingholme power station and, potentially, to the operation of the Hornsea 1 and 2 projects.
- 6.407 These are dealt with in turn, below. The ExA recognises that the second in the previous paragraph relates to the application for certificate under s.127 of the Planning Act 2008, as amended. It is, however, dealt with at this juncture in the report as these two issues are considered to be interrelated.
- 6.408 The considerations relating to serious detriment set out below are also used to inform the s.127 Examiner's recommendations in Appendix F.

Alternative

- 6.409 The question of an agreement being reached over land to the east and south of the Centrica's North Killingholme Power Station was raised in Centrica' Relevant Representation dated 21 June 2013 [RR-026] and in its Written Representation [REP-047]. This stated that:

Centrica's previous representations on the Project introduced the idea of using the land to the east and south of the Killingholme

power station for the electrical grid connection corridor / route, rather than the land to the west as proposed in the application for development consent. This land is within the freehold ownership of Centrica, but is not required for the "replanting" of the Killingholme power station. Centrica has subsequently entered into discussions with C.GEN's agents, Ardent, over granting an easement to C.GEN for the use of the land to the east of the Killingholme power station

- 6.410 C.GEN responded to this in para 2.30.1 of its undated response to Centrica's Written Representation [REP-156] stating that:

C.GEN is willing to reach an agreement with Centrica on using the land to the east and south of the Centrica power station for its Electrical Grid Connection route

and that, in para. 3.26.2:

C.GEN has looked at the land within Centrica's landholding and considers that, subject to the results of the technical studies, such an easement is likely to be capable of being limited to a strip of land along the western boundary of Centrica's landholding.

- 6.411 However, by the end of the Examination, agreement had still not been reached on this. Issues of significance have been raised by C.GEN over this in its *Response of C.GEN Killingholme Limited ("C.GEN") to Centrica's Written Summary of its oral representations at the issue specific hearing into compulsory acquisition and Response of C.GEN Killingholme Limited ("C.GEN") to Centrica's submission on the replanting of the Centrica Power Station [REP-300]*. Paras 1.1, 1.4 and 1.5 state that:

... Centrica's proposal has not been accompanied by any response or any draft documents. As such, it cannot be afforded weight since every other term of such an arrangement would remain to be agreed. Therefore, this putative clockwise route is not an alternative, far less one that is readily available. Secondly, ... a clockwise connection is a far less optimal connection route as it involves more infrastructure interfaces [...] than an anti-clockwise connection which conceivably may not require any crossings, except with SMart Wind Project Two, which is yet to be promoted.

- 6.412 The ExA consider that the fact that there is an offer of an agreement to proceed without CA is not at issue between the applicant and Centrica. The issue is the weight that can be afforded to this offer in terms of whether it constitutes a reasonable alternative to CA.

- 6.413 One relevant issue raised is that of the cost of acquisition. In paras 2.7 and 2.8 of Centrica's *summary of oral representations relating to the CA and s.127 hearings held on 11-12 February 2014 [HR-137]* Centrica state that:

Centrica are satisfied that they remain a willing seller in the provision of a cabling route to the east of the Killingholme power station. Centrica are, however, aware that the market value of this access route is difficult to resolve at this time and that this issue represents a potential impediment to the early settlement of terms in delivery of this routing option.

Accordingly, Centrica are willing to enter into an option with C.GEN to secure this route on terms that would allow for the establishment of open market value at the time of acquisition and by reference to a binding third party assessment if a mutually acceptable value cannot be agreed.

6.414 The ExA notes that according to the evidence provided [REP-048] an offer to discuss the use of Centrica's land was made on 19 March 2013 – nearly a year before the close of the Examination. It has not helped the application that matters have not progressed further during that period.

6.415 In relation to this timescale, one of the points made by SMart Wind Limited in its response to ExA's third round of written questions is that:

Whilst SMart Wind acknowledges that the agreement was not signed until 30 April 2013, it wishes to stress to the Ex.A that it believes that C.GEN would have had a written offer from NGET at the time of Application. On this basis C.GEN would have known, or at the very least would have been almost certain, that its connection would be to the Killingholme Substation. On this basis, C.GEN should have included this eastern/clockwise route within the scope of its Application

6.416 In its responses to the ExA's second written questions [REP-230] Centrica stated that it:

is in continued negotiations with C.GEN to seek a resolution to these issues prior to the next CPO hearings, however unless and until the draft DCO contains adequate insulation for Centrica's undertaking against the powers sought there will result serious detriment to that undertaking and Centrica maintains its objections in relation to the compulsory purchase and s127 applications.

Replanting

6.417 The nature of the 'replanting' of Centrica Plc's Killingholme Power Station is described in para. 2.11 of Centrica's Written Representation [REP-047]:

The gas turbines in the Killingholme Power Station have a limited life span and Centrica is expecting to have to replace the turbines in the coming years. The current life span of the turbines is determined by compliance with the latest Industrial emissions

Directive (IED) and the latest estimate is that they will be withdrawn from service and replaced in June 2020. The most economically viable method for doing so would be to build ("replant") new heat recovery boilers with new gas turbines on the land to the immediate west, within the existing boundary fence of the Killingholme Power Station. This would ensure that the Killingholme Power Station can continue to operate the existing gas turbines, and therefore continue to produce electricity, whilst the new gas turbines and heat recovery boilers were being constructed. This would not be the case if the gas turbines were to be replaced within their existing foot print, as this would require a substantial shut down of the Killingholme Power Station.

6.418 Following the reduction in the order limits proposed by the applicant in January 2014 the applicant submitted [REP-253] that:

C.GEN's submission of revised, reduced order limits ensures that Centrica is properly able to "replant" its existing power station. The acquisition of just 10m of land would not prejudice any such works. Further, it is noted that Centrica has not provided any evidence that C.GEN's Project would prevent replanting of the existing power station.

6.419 In para 2.3 of its *Written Summary of Oral Submissions made by Centrica Storage Limited and Centrica KPS Limited ("Centrica") at the Compulsory Purchase and Section 127 Hearings, 11-12 February 2014* [HR-137] Centrica states that:

It is simply not possible to say that "10m of land would not prejudice any such works" given the accepted constraints of the available land and when the detailed design of those works and precise land requirements are yet to be finalised.

6.420 On 14 February 2014 the applicant provided an Explanatory Memorandum [HR-126] which included a preliminary plot plan showing a worst case scenario which involves the construction of a complete new CCGT. The applicant concluded that: *Based on the attached and previous information submitted in the Examination, C.GEN is comfortable that Centrica can replant their existing power station with an entirely new CCGT (maximizing their net output) whilst keeping the existing plant in operation and keeping the ten meter (sic) wide strip for C.GEN's cable connection free.*

6.421 The ExA has taken this into account but considers that such a submission does not constitute the detailed design studies that would be required in respect of the replanting of the power station.

Connection to Killingholme substation

6.422 The revised Grid Connection statement [APP-096] states that:

National Grid ... confirmed that C.GEN may connect to the existing Killingholme Substation. That Connection Agreement was entered into by National Grid and C.GEN on 30 April 2013 for this purpose.

- 6.423 There was discussion at the February 2014 CA hearing concerning the connection to Killingholme Substation. In its summary of its oral evidence at that hearing [HR-139] National Grid (NG). set out its overall position:

Pursuant to its statutory obligations of economy and efficiency, NG considers that the utilisation of the two existing bays before building further bays is the most economic and efficient approach. Therefore the western bays will be assigned to whichever two projects are the first to come forward, currently anticipated to be the applicant and Hornsea Offshore Project One.

However, it also stated that:

... routing any cable through and around NG's overhead line pylons in the grid connection corridor must be a last resort. It is not possible for NG to approve or commit to any cabling route in this location at this stage

- 6.424 Following discussion at the February 2014 CA Hearing, the applicant provided a revised Figure 2 for the Connection Statement showing potential substation connection corridors [APP-112]. An e-mail from National Grid dated 3 March 2014 [REP-287] agreeing a statement by the applicant both that that the routes shown are *considered by both National Grid and C.GEN as feasible* and that the plan *demonstrates certainty that C.GEN has an electrical grid connection which is deliverable.*
- 6.425 National Grid stressed that if agreement could be reached on a satisfactory wording for a protective provision, then it would be prepared to withdraw its objection to the application and the s.127 application.

Conclusion

- 6.426 Given the evidence submitted, the ExA concludes that there is a potential alternative route to the east and south of Centrica's power station which could both obviate the need for CA and which would remove the uncertainty about the effects of the CA on the ability of Centrica to carry on its undertaking without serious detriment, including in the longer term through the replanting of the power station..
- 6.427 One of the tests set out in *DCLG Guidance related to procedures for the compulsory acquisition of land*, published in September 2103, is that *all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.* The ExA cannot conclude that the alternative route and the possibility

of the acquisition of rights by agreement rather by compulsion have been explored.

- 6.428 In coming to this conclusion we bear in mind the final statement in the applicant's response to the ExA's third round of written questions [REP-305] that: *C.GEN considers that it is unlikely that agreement will now be reached. However, it is willing to negotiate with Centrica in the period which remains prior to the examination closing on 11 March 2014 and, should agreement not be reached by the close of the Examination on 11 March 2013, C.GEN remains willing to negotiate even after the close of the Examination.*
- 6.429 Second, we conclude that the use of the northerly and westerly route around the Centrica's power station would produce uncertainty around the 'replanting' of that power station and that adverse impact on this cannot be ruled out in advance of detailed engineering studies being undertaken. As Appendix F shows, the s.127 Examiner has concluded that he cannot recommend the issuing of a Certificate under s.127 or the consent to the inclusion of a provision under s.138 of the Planning Act 2008, as amended in respect of Centrica Plc.
- 6.430 Third, it is also worth noting, in respect of potential conflict with Hornsea projects that, given the evidence submitted, the s.127 Examiner has concluded that he cannot recommend the issuing of a Certificate under s.127 or the consent to the inclusion of a provision under s.138 of the Planning Act 2008, as amended in respect of Heron Wind Limited or Optimus Wind Ltd.

Recommendation

- 6.431 The ExA has already recommended that the application for powers of CA on these plots should be refused as it fails to meet tests related to risks and impediments and to the requirement for all the land.
- 6.432 However, should the Secretary of State not be minded to accept the overall recommendation against CA for plots on the grid connection corridor, the ExA further recommends that, given the ExA's conclusions, above, that the application for the CA of plots 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05 should not be granted.

Consequential Recommendation for Schedule 5

- 6.433 Consequent on this recommendation, above and that in para. 6.295, above, the ExA recommends that Schedule 5 of the applicant's recommended DCO [APP-114] be amended to remove those plot numbers and those purposes related to 'gas supply pipes' and to 'electricity transmission cables'. These are plot numbers 02/01, 02/04, 02/05, 02/06, 03/03, 03/04, 03/05, 03/06, 03/07, 03/08, 03/09, 04/01, 04/04, 04/05, 04/06, 04/07, 04/08, 04/09, 04/10, 05/01, 07/02, 02/02, 02/03, 03/01, 03/02,

04/02, 04/03, 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 03/03, 09/04, 09/05, 09/06, 09/07, 09/08, 09/09, 09/10, 09/11, 09/12, 09/13, 09/14, 09/15, 09/16, 09/17, 09/18, 09/19, 10/01, 10/02, 10/03, 10/04, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/23, 11/01, 11/02, 11/03, 11/04, 11/05, 11/06, 11/07, 11/08, 11/09, 11/10, 11/11, 10/22 and 11/12.

6.434 The reasons for this are, first, that these works have not been applied for and, therefore, will not be consented if the Secretary of State decides to grant consent for the recommended DCO. Second, and related, the ExA has recommended that the application for powers of CA for new rights over those plots specified in Schedule 5 as being related to these purposes should be refused. There is, therefore, no justification for allowing temporary possession to be taken of these plots as any works that may take place on these plots are outside of the scope of the DCO application.

6.435 In addition, the following plots 02/01, 02/04, 02/05, 02/06, 04/09, 02/02, 02/03, 09/06, 09/07, 09/08, 09/09, 09/10, 09/11, 09/12, 09/13, 09/14, 09/15, 09/16, 09/17, 09/18, 09/19, 10/01, 10/02, 10/03, 10/04, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/23, 11/01, 11/02, 11/03, 11/04, 11/05, 11/06, 11/07, 11/08, 11/09, 11/10, 11/11, 10/22 and 11/12 had already been removed from the Order Limits by virtue of the ExA's procedural decisions dated 4 October 2013 [DEC-006] and 3 March 2014 [DEC-016] following applications from the applicant to alter the order limits. These plots should not, therefore, be listed in Schedule 5.

DELIVERABILITY

6.436 The ExA has considered all the issues raised by the application for powers of CA most carefully and has made all the recommendations above after thorough consideration of the tests set out in statute and of the policy and guidance in relation to CA.

6.437 Having made these recommendations, particularly in respect of the Electrical Grid and Gas Connector Corridors, the ExA recognises that, if the Secretary of State was minded to accept these recommendations, this may give rise to some difficulties in delivering the Project which, in other sections of this report, the ExA recommends should be consented.

6.438 In respect of the grid and gas connector corridors, there remains the alternative of seeking to acquire by agreement with, in the case of statutory undertakers, the agreeing of protective provisions. This section of the report has cited evidence from the applicant that this process has been engaged before and during the Examination and will continue after the Examination closed.

- 6.439 The applicant has chosen to pursue the permitting of the works through an application or applications under town and country planning legislation. This legislation, in s.226 of the Town and Country Planning Act 1990, as amended by s.99 of the Planning & Compulsory Purchase Act 2004, also contains powers of compulsory purchase including for the object of the promotion or improvement of the economic well-being of their area.
- 6.440 One of the reasons for the ExA's recommendations on the connector corridors is that of uncertainty as to the outcome of any planning applications. If, however, the local planning authority is minded to approve such applications, the authority may wish to consider using its powers of compulsory purchase under s.226 of the Town and Country Planning Act 1990.
- 6.441 Given this, the ExA considers, therefore, that its recommendations on CA have not rendered the Project undeliverable and, therefore incapable of being consented.

7 DRAFT DEVELOPMENT CONSENT ORDER

- 7.1 A draft DCO [APP-006] and Explanatory Memorandum [APP-007] were submitted with C.GEN's application for development consent. The Explanatory Memorandum describes the purpose and form of the draft DCO and each of its articles and schedules. The draft DCO is based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, but with differences. A copy of the Model Provisions with tracked changes, reflecting the differences, was also submitted by the applicant. [REP-085]
- 7.2 During the examination, several further drafts of the DCO were submitted by the applicant incorporating progressive changes arising from the Examining Authority's (ExA's) written questions, points made by interested parties, and from the proceedings at the DCO hearings held on 20 November 2013 and 4 February 2014.
- 7.3 Version 5 [APP-107] and a tracked copy showing changes from the application draft [APP-108] were submitted to meet the 19 February 2014 deadline for the final version of the draft DCO. Following comments made on this by interested parties, including NE, a further version, Version 6, [APP-114] was submitted on the last day of the Examination, with slight amendments to Requirement 48 (Visual attenuation of train movements) taking into account NE's comments, and with the protective provisions section updated.
- 7.4 The ExA decided to accept this version and took the view that it was not necessary to extend the examination to allow further comment. The ExA has used Version 6 to inform this report.
- 7.5 In addition, the ExA has prepared a version of the draft DCO, which we recommend to the Secretary of State, together with a document showing the differences between the ExA's recommended version and the applicant's first draft DCO. All of the suggested changes were considered in the Examination.
- 7.6 Much of the draft DCO was not the subject of objection. Some proposed alterations are made for the purposes of clarification, for the correction of minor errors, or to reflect changes proposed elsewhere in the draft DCO. Those aspects of the draft DCO which are contentious or to which substantial alterations are proposed are considered in the following paragraphs.

ARTICLES

- 7.7 The principal powers sought in the DCO are for the erection and operation of the Works described in Schedule 1 Part 1 of the draft DCO, in accordance with alternative construction scenarios set out in paragraph 2.26, above.

- 7.8 The numbering of articles reflects that of the applicant's final draft DCO, Version 6.

Article 2 - Interpretation of Commence

- 7.9 The ExA expressed concern about the width of exclusion in the definition of 'commence'³⁹. The applicant explained that the definition of 'commence' had been deliberately drafted to allow the carrying out of preparatory works on the site swiftly after a grant of development consent. The applicant also noted that initial work of general benefit would be carried out, such as site preparation, likely to be of value whatever future use is made of the land.
- 7.10 However, such width of exclusion provides uncertainty over the commencement of the Project. It allows quite significant ground preparation without any need to comply with the protective provisions within the DCO unless their specific wording indicates otherwise.
- 7.11 It also allows the Project to progress to a significant degree before those requirements of Schedule 1, Part 3 which must be discharged before commencement, are fulfilled. Such requirements include the submission and approval of a masterplan (Requirement 2), a detailed landscaping scheme, of the highway works, and of a Construction Environmental Management Plan (CEMP).
- 7.12 In many instances it would be essential for these requirements to be fulfilled before any work is carried out on site. An example is Requirement 17, submission and approval of a written scheme to monitor noise during construction. As drafted, the requirement would bite only after site clearance, demolition works, and ground investigations.
- 7.13 In response to ExA's question DC02/01 [REP-182], the applicant set out those requirements which it agrees must be fulfilled before any part of the authorised development is carried out. The ExA largely concurs and, further to the amendments contained in the applicant's final draft DCO, has incorporated the appropriate changes of wording in its recommended version of the draft DCO.
- 7.14 In addition, the width of exclusion in the definition of 'commence' leads to contradictions in the wording of some requirements which would raise problems of enforcement were they to remain. An example is Requirement 9, which prevents commencement until details of temporary fences are approved even though, under the 'commencement' definition, temporary means of enclosure would

³⁹ Covering operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements.

be allowed prior to commencement. These contradictions have been resolved with similar wording.

- 7.15 Able made representations expressing concern that the definition would allow the scheme to be regarded as commenced through a minor action, safeguarding the powers to construct under the Order without any firm intention to complete. However, this points to too few rather than too many exclusions. Moreover, safeguards would exist through the definition of material operation in the Town and Country Planning Act 1990, and through relevant case-law. Able's point does not appear to the ExA to represent a credible concern.

Article 2 - Interpretation of Maintain

- 7.16 The ExA also expressed concern about the width of the definition of 'maintain', which includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve. This covers activities which would normally be taken to be development, and which can be construed without limitation. Of particular concern is the inclusion of the terms 'reconstruct', 'demolish', and 'replace'.
- 7.17 The applicant acknowledged that 'demolish' interpreted by case-law would mean the complete, or near complete, removal of the generating station. This is not a power C.GEN seeks, except at the end of the life of the generating station. The applicant also acknowledged that 'reconstruct' and 'replace' should be limited to any part but not the whole. The wording of the applicant's final draft DCO has been adjusted accordingly.
- 7.18 Able expressed similar concern, noting that the breadth of the activities permitted under the definition could not have been assessed in the ES.
- 7.19 The ExA notes that the works carried out as 'maintenance', including replacement of items of plant or parts of the authorised development, would be constrained by the nature of the Project for which development consent had been granted and be subject to the articles and detailed requirements of the DCO. Nevertheless, for the avoidance of doubt, the ExA's recommended draft DCO inserts within the definition in Article 2 the words '...but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environmental statement...' before '...and "maintenance" shall be construed accordingly.'

Article 2 – Interpretation of Order land and Order Limits

- 7.20 The Location and Land Plans Key Plan [APP-004] equates the red line, enclosing the PPA and the connector corridors, with the Order limits. The applicant's DCO definition then describes the Order limits as those within which the authorised development may be

carried out. However, under the powers sought, no part of the authorised development may be carried out within the connector corridors. Moreover, the applicant's DCO definitions of Order land and Order limits make no reference to CA. The ExA's recommended draft DCO amends the definitions of Order Lands and Order limits with the aim of resolving these difficulties.

Article 3(5)(b) - Development consent, etc. granted by the Order - Vertical Deviation

- 7.21 The vertical deviation which would be allowed to the built elements of the Project under this article is substantial, being 5 metres (m) upwards from the heights specified in Part 2 of Schedule 1 of the draft DCO, and any extent downwards. The exception is the main stack, which would be constructed to a minimum height to allow the safe dispersal of emissions. In later iterations of the draft DCO, a minimum height restriction was also placed on the flare stack, for similar reasons. Work No 6b, the pipe conveyor, does not appear in Part 2 of Schedule 1, but location and height constraints are identified in the Land and Works Plans and the Conveyor Section planning drawing [Document Ref No 2.28].
- 7.22 The applicant explained, in response to the ExA's questioning in the second DCO Hearing of 4 February 2014 in particular [HR-100], that although a feasibility study had been carried out to gauge reasonable worst case heights, the detailed engineering design ascertaining these heights was yet to take place. Different technological solutions produced by different manufacturers, especially for the Integrated Gasification Combined Cycle (IGCC) plant, are characterised by different dimensions. Flexibility is therefore required so that the ability to seek optimum engineering choice is not unreasonably constrained.
- 7.23 The applicant noted that this is particularly so for elements such as the acid gas removal facility, the gasifier, and the air separation unit, the buildings positioned centrally in the PPA, but is less important for structures such as the solid fuel storage warehouse. Moreover, air quality would not be affected, there being no downwash effect from the Project buildings near the stacks.
- 7.24 At the ExA's request a photomontage illustrating the visual effects of maximum upward deviation was produced [REP-181, DCO2/03/APP1], and the applicant revisited the Landscape and Visual Impact Assessment, confirming the conclusions set out in the ES at Chapter 9, Tables 9.12 and 9.13. The effects on scale within the overall context of surrounding landscape and built environment are not great. Moreover, it is not likely that the design theme, set out in the Architectural Study, or the visual effects arising, would be disrupted by the increased height of the main processing elements in the centre of the site.

- 7.25 The ExA considered whether differential vertical deviation limits should apply. However, we are satisfied that implementation of the full deviation is unlikely for other than the central processing elements, that unintended and unnecessary constraints might arise from an attempt to differentiate between the elements, and that should other elements be subject to the full deviation this would not be unacceptably harmful. In any event, the scheme is subject to detailed design approval under Requirement 3, which includes control of the dimensions of the main built elements within the overall deviation constraints.
- 7.26 In addition, the ExA is satisfied that implementation of the full deviation would not materially change the conclusions reached in the ES.
- 7.27 A further matter relates to the wording of the first line of Article 3(5), 'In constructing or maintaining the scheduled works...' the vertical deviation is allowed. This might be taken to allow a further upward deviation of 5m each time maintenance works are carried out. This is clearly not the applicant's intention and C.GEN suggested, during the hearings process, that the words 'or maintaining' should be excluded from the permitted upward deviation.
- 7.28 The ExA agrees that this would clarify intentions and powers. Our recommended draft DCO shows this alteration.

Article 4 - *Non-material changes*

- 7.29 Article 4 of the draft DCO applies s96A of the 1990 Act, providing the relevant planning authority with the power to change the DCO if they are satisfied that the change is not material. In response to exchanges made during the examination, the application of the article has been restricted to Articles 3, 5, 6, 31 and 32 and Part 3 to Schedule 1 (Requirements).
- 7.30 This article is not based on the model provisions. It is intended to allow changes of a minor nature without triggering a fresh application under either the 2008 or the 1990 Act. However, it would stand in place of Schedule 6(2) of the Planning Act 2008 (s153 Changes to, and revocation of, orders granting development consent, refers), which reserves this power to the Secretary of State.
- 7.31 At the second DCO issue specific hearing, the applicant questioned whether the Secretary of State ought properly to exercise granular control over minor non-material changes. It noted that the Secretary of State is necessarily concerned with matters of national significance and, in terms of good administration, non-material changes are best addressed at the local level. NLC confirmed it was equipped to act in accordance with the article.

- 7.32 The ExA observes that the effect of the applicant's draft Article 4 would be to subvert the statutory framework of the Planning Act 2008. It is for the Secretary of State to decide whether to delegate the power to approve non-material changes to the local planning authority. The Secretary of State may wish to strike out Article 4 from the final drafts of the DCO.

Article 5 - Maintenance, decommissioning and demolition of authorised development

- 7.33 At the second DCO Hearing, Able pointed out that Article 5 is not compatible with Requirement 3 (Detailed design) in that there is no provision for maintenance works to undergo an approval process [HR-101]. The ExA agrees and suggests that the difficulty could be overcome by an addition to the wording of the final line of Requirement 3, 'The development shall hereafter be carried out in accordance with the approved details', to read 'The development shall hereafter be carried out and maintained in accordance with the approved details'.

- 7.34 It may be, if the works of maintenance differ from the approved design, permission for a non-material change would be sought from the Secretary of State or the local planning authority. In addition, the ExA suggests that this final line be given the paragraph subheading (2) for the sake of clarity. These points have been incorporated in the ExA's recommended draft DCO.

Article 7 - Benefit of the Order

- 7.35 Article 7 distinguishes between benefits which are available to the named undertaker (or with the consent of the Secretary of State, a transferee or lessee) such as CA, and the benefits available to all those with an interest in the land. The ExA was concerned that the applicant's first DCO draft simply referred to 'undertaker', the definition of which, under Article 2, includes any other person who has the benefit of the Order in accordance with s156 of the Planning Act 2008, as amended.
- 7.36 S156 provides that the order has effect for the benefit of the land and all persons for the time being interested in the land, unless otherwise provided for in the DCO. The distinction between the two sets of beneficiaries would, therefore, dissolve. However, amendment to 'named undertaker' in the applicant's final DCO draft limits the beneficiary to C.GEN. For the sake of consistency, the ExA's suggested draft DCO also makes the amendment to 'named undertaker' at paragraph (2). The ExA is now satisfied that the distinction is properly made.

Article 11 - Temporary stopping up of streets

- 7.37 This article largely reflects the equivalent model provision, but contains the addition of paragraph (4), which allows any street to be temporarily stopped up, altered or diverted within the footpath

diversion zones shown on the land plans. The article is directed to streets in general, as defined in the 1991 Act. Under sub-paragraph (5)(b), powers relating to streets other than footpaths cannot be exercised without the consent of the local highway authority. However, paragraphs (3) and (4) are directed exclusively at footpaths and provide powers which can be exercised under sub-paragraph (5)(a) after consulting the local highway authority.

- 7.38 The ExA was concerned that the article would confer the power to divert footpaths yet to be created without constraint. However, we are now reassured that the powers would apply only to the footpath diversion zones shown, since exercise in relation to any other street would be subject to the consent of the local highway authority under sub-paragraph 5(b). Compensation for loss caused by the suspension of any private rights of way would be payable under paragraph (6).
- 7.39 It is understood that the only footpath which might be created is that linking FP74 and FP77 envisaged by the Able Logistics Park (ALP) consent, and that its temporary stopping up would be accompanied by a diversion within the footpath diversion zone.
- 7.40 In the recommended draft DCO, the ExA has corrected a typographical error by omitting the words '...such street...' from the penultimate line of paragraph (4).

Article 16 - *Compulsory acquisition of land*

- 7.41 Paragraph (5) excludes land owned by the Simon Group Limited and by Associated British Ports (ABP) from exercise of the powers of Articles 16 to 27. It is understood this is by agreement, and that C.RO Ports Killingholme Ltd (CPK) is a subsidiary of the Simon Group. The ExA is of the view that the applicant's stated intention of protecting CPK should be made clearer by modifying sub-paragraph (5)(a) of this article to read, 'land owned for the time being by the Simon Group Limited (company number 00052665) or its subsidiaries, including CPK, or to any mortgagee of such land in respect of an interest owned by the Simon Group Limited or any of its subsidiaries.'

Article 20 - *Compulsory acquisition of rights*

- 7.42 Paragraphs 6.58 to 6.81 above, set out the differences between the ExA's and the applicant's interpretation of the statutory position with regard the CA of rights relating to land held by the Crown. The ExA considers that to bring certainty, paragraph (1) of this article should be extended by the addition of the words '...except for interests held by the Crown.'

Article 27 – Statutory Undertakers

- 7.43 In the interests of clarity, the ExA recommends that paragraph (d) is added to Article 27. This prevents the applicant from exercising powers over those parties in whose case the ExA cannot recommend either a s127 certificate or powers of CA.

Article 33 - Application of the Pipelines Act 1962

- 7.44 This article was included in the applicant's first draft DCO to provide an option for connection to the pipeline supplying the EON power station. This is no longer contemplated by the applicant and so the article does not appear in the final draft DCO.

Article 34 - Certification of plans, etc.

- 7.45 The first draft of the DCO limits certification to the book of reference, the land plans, and the works plans. The applicant's final draft also includes the Design and Access Statement (DAS) [APP-065], the Architectural Study [REP-179], the outline CEMP, and the ES [APP-009 to APP-051].
- 7.46 The applicant was reluctant to include the ES and the outline CEMP since the ES is only part of the environmental information considered in the examination and the CEMP has been revised and is subject to further amendments. The ExA understands these points. However, reference is made to both the ES and the outline CEMP in the DCO requirements, as well as to the DAS and the Architectural Study, and it is therefore appropriate that certified copies are available to which reference can be made.
- 7.47 Paragraph (3) states that certification of the ES is only for the purposes of the requirements noted. These are the requirements that refer to the ES in the applicant's final draft. However, the ExA considers that the ES should be referred to in several other requirements, as explained below, and is of the view that this subparagraph should be deleted.
- 7.48 The ExA's recommended draft DCO omits this paragraph and, in addition, identifies documents to be certified with dates and plans with numbers, for the avoidance of doubt.

Description of works

- 7.49 The works comprising the Project are set out in Schedule 1, Part 1 of the draft DCO. Minor changes, for the sake of clarification, were made during the Examination. Associated development is identified at the end of this Schedule.
- 7.50 Other schedules are listed in the Contents Section of the draft DCOs.

Protective provisions

- 7.51 Schedule 8 of the applicant's final draft DCO [APP-114] contains draft Protective Provisions for the protection of:
- Anglian Water (Part 1)
 - Environment Agency (Part 2)
 - National Grid (Part 3)
 - Network Rail (Part 4)
 - Centrica Plc. (Part 5)
 - Able Humber Ports Limited (Part 6)
 - Interfaces with Hornsea Project Companies (Part 7)
- 7.52 The status of these draft Protective Provisions is as follows:
- 7.53 Anglian Water Services (AWS) has withdrawn its representations in relation to s.127 and s.138. The draft Protective Provisions, which are in an agreed version, should be incorporated into the final DCO.
- 7.54 EA has withdrawn its representations in relation to s.127 and s.138. The draft Protective Provisions, which are in an agreed version, should be incorporated into the final DCO.
- 7.55 The Protective Provisions for National Grid were not in an agreed version by the time that the examination closed. The position of National Grid in relation to the applicant's application for a certificate under s.127 and the inclusion of a provision under s.138 of the Planning Act 2008 as amended is examined in Appendix F of this report.
- 7.56 Network Rail has withdrawn its representations in relation to s.127 and s.138. The draft Protective Provisions, which are in an agreed version, should be incorporated into the final DCO.
- 7.57 The Protective Provisions for Centrica Plc. were not in an agreed version by the time that the examination closed. The position of Centrica Plc. in relation to the applicant's application for a certificate under s.127 and the inclusion of a provision under s.138 of the Planning Act 2008 as amended is examined in Appendix F of this report.
- 7.58 The Protective Provisions for Able were not in an agreed version by the time that the examination closed. Able stated in response to the ExA's third round of written questions (q. CA3/01) [REP-306] that:

The Applicant has submitted limited protective provisions in respect of Able Logistics Park to the Panel. Able viewed these for the first time on 25 February 2014. We attach as an appendix to these responses a marked up version of the protective provisions that we believe would more successfully provide the protection that is intended by the Applicant. However, our submission of this

revision is not intended to suggest that these provisions are sufficient to protect Able's interests. For the avoidance of doubt Able considers these protective provisions inadequate and maintains its objection to both the proposed compulsory acquisition of its land, and to the principle of the project.

- 7.59 The Protective Provisions for the Interfaces with Hornsea Project Companies were not in an agreed version by the time that the examination closed. The position of the Hornsea Project Companies in relation to the applicant's application for a certificate under s.127 and the inclusion of a provision under s.138 of the Planning Act 2008 as amended is examined in Appendix F of this report.
- 7.60 Thus the Protective Provisions for National Grid, Centrica Plc., Able, and the Hornsea project Companies were not in an agreed version by the time that the examination closed.
- 7.61 The ExA recommends the protective provisions for these parties should not be endorsed by the Secretary of State and that, therefore, Section 8 parts 3, 5, 6 and 7 of the applicant's draft DCO should be deleted.

REQUIREMENTS

- 7.62 Key requirements set out in Schedule 1 Part 3 of the draft DCO, and those which were found to be contentious in the Examination, are described in the following paragraphs. An explanation of modifications to those set out in the applicant's first draft DCO, either agreed by the applicant or suggested by the ExA, are given.
- 7.63 In considering whether the requirements are appropriate, advice in the Planning Practice Guidance (PPG), Use of Planning Conditions has been followed. Moreover, the six tests set out in the National Planning Policy Framework (NPPF) at paragraph 206 have been applied.
- 7.64 The numbering of requirements reflects that of the applicant's final draft DCO, Version 6.

Requirement 1 - Time limits, etc.

- 7.65 The draft DCO specifies a time limit of 7 years for commencement of the development. The applicant justifies this period, in C.GEN's response to the ExA's first round question DCO3, as being necessary to give flexibility to the project to allow entry into the electricity sector at an appropriate time given uncertainty about its development, particularly in the next decade. Also, as CO₂ storage and transport solutions improve, the feasibility of an IGCC plant with Carbon Capture Storage (CCS) will increase into the 2020s.

- 7.66 The ExA understands the need for flexibility in the interests of feasibility and tailoring delivery to the changing market. We consider the time limit appropriate.

Requirement 2 - Masterplan

- 7.67 In the applicant's first draft of the DCO the requirement was simply for a construction phasing scheme. It has developed considerably during the examination, in response to the ExA's concerns over the wide implications of the Project as a single development with alternative development branches. As discussed in the first DCO Hearing of 20 November 2013, the ExA considered there to be a need for a detailed masterplan tying together the various construction and operational traffic management and travel plans, the CEMP, a phased landscaping plan, and a management plan to control the use and maintenance of undeveloped land, together with linked monitoring plans.
- 7.68 In the final draft of the DCO, the requirement for submission to, and approval by, the relevant planning authority of a single or phased masterplan is in a suitably detailed form.

Requirements 3 and 4 - Detailed design

- 7.69 As set out in paragraphs 4.57 to 4.63 above, the ExA criticised the applicant's failure to take advantage of the architectural opportunities available, and the uninformative nature and lack of specificity of the indicative drawings submitted with the application. The change in Requirements 3 and 4 between the applicant's first and final drafts of the DCO reflect the journey travelled. In particular, accordance with the principles of the Architectural Study, taking precedence over the DAS, has been introduced. Also, the option of departing from the indicative drawings, subject to the approval of the relevant planning authority, has been removed.
- 7.70 In addition, as noted in paragraph 7.33 above, the ExA advises that Requirement 3 should specify that the development shall be carried out *and maintained* in accordance with the approved details.

Requirement 6 - Provision of landscaping

- 7.71 The Requirement prevents the carrying out of any part of the authorised development until a scheme has been submitted to and approved by the relevant planning authority. The ExA suggests that this should be qualified by adding the wording '...within the constraints of the environmental information assessed and subjected to examination'. This is in the interest of avoiding any material effects which were not anticipated and assessed through the environmental information presented to the examination.

Requirement 7 - Implementation and maintenance of

landscaping

- 7.72 At paragraph (2), the Requirement allows variation to the landscaping scheme where approved by the relevant planning authority. The ExA considers this acceptable since the scheme would have been approved in the first instance by the authority, but with the same qualification as it suggests should apply to Requirement 6.
- 7.73 Similarly, paragraph (3) allows the relevant planning authority to vary the species of replacement boundary shrub or vegetation. The ExA considers the same qualification should apply.

Requirement 10 - *Construction surface water drainage*

Requirement 11 - *Operational surface and foul water drainage*

- 7.74 Under both these requirements, a written scheme must be submitted to and approved by the relevant planning authority, and implemented in accordance with the approved details unless otherwise agreed by the relevant planning authority.
- 7.75 In this case, the ExA considers that surface water and foul water drainage are not matters that go to the heart of the Project and that it is acceptable to allow the relevant planning authority the flexibility to approve schemes and to subsequently agree changes in writing. No qualification is therefore necessary.

Requirement 12 - *Contamination and ground water*

- 7.76 The content of this requirement has changed fundamentally between the applicant's first and final draft of the DCO. Revised wording was agreed in the Statement of Common Ground (SoCG) between the applicant and the EA. However, the wording was further amended, with the agreement of the EA, to reflect the concerns of NLC. At the second DCO Hearing of 4 February 2014, both NLC and EA confirmed their agreement with the wording. The ExA is also content with the substantive wording and considers it would be effective.
- 7.77 Approval of the investigation and the remediation strategy by the relevant planning authority is required and no deviation from the scheme is permitted without its express written agreement. In this case, the ExA considers that contamination and ground water are not matters that go to the heart of the Project and that it is acceptable to allow the relevant planning authority the flexibility to approve a scheme and to subsequently agree changes in writing. No qualification is therefore necessary.

Requirement 13 - Archaeology

- 7.78 The requirement relating to archaeology has changed substantially between the applicant's first draft DCO and the final draft, reflecting the developments described in paragraphs 4.220 to 4.225 above. The ExA suggests amended wording, to allow for further exploratory trenching, if the relevant planning authority considers it necessary, before construction begins, as well as watching and recording during construction.

Requirement 14 - Construction Environmental Management Plan (CEMP)

- 7.79 Approval of a CEMP substantially in accordance with the outline CEMP is required in paragraph (1). Thus the CEMP would relate substantially to an outline form on which consultation has taken place.
- 7.80 Paragraph (2) requires all construction work to be carried out in accordance with the approved CEMP unless otherwise approved by the relevant planning authority. The ExA considers that a qualification should be added to this tailpiece by adding the words '...within the constraints of the environmental information assessed and subjected to examination'. This is in the interest of avoiding any material effects which were not anticipated and assessed through the environmental information presented to the examination.

Requirement 16 - Control of noise during construction

- 7.81 The maximum noise level specified in this requirement at any residential location resulting from construction activities has decreased from 65dB LA_{eq}, 1 hour to 51dB LA_{eq}, 1 hour between the applicant's first draft DCO and the final draft. The aim is to protect the living conditions of occupants, and the change agreed in the SoCG [REP-281] arises from concerns raised by NLC [REP-060 and REP-064].
- 7.82 A tailpiece to the requirement states that the maximum level shall not be exceeded unless otherwise agreed in writing by the relevant planning authority. The ExA considers that this should be qualified by adding the words '...and be within the constraints of the environmental information assessed and subjected to examination'. This is to avoid effects which have not been assessed through the environmental information presented to the Examination.

Requirement 19 - Control of noise during operation

- 7.83 Between the applicant's first draft DCO and the final draft, the format of permissible noise levels has changed from different values at identified locations to single values of 35dB LA_{eq}, 1 hour for daytime and 35dB LA_{eq}, 5 minutes for night-time at any existing

residential location. The change agreed in the SoCG [REP-281] arises from concerns raised by NLC [REP-060 and REP-064].

- 7.84 Paragraph (1) of the Requirement states that these noise levels shall not be exceeded except in the case of emergency, or otherwise agreed in writing by the relevant planning authority. The ExA considers that this tailpiece should be qualified as in Requirement 16, and for the same reasons.

Requirement 23 - Construction hours

- 7.85 Construction hours are set out, outside of which construction work shall not take place Monday to Saturday, unless otherwise agreed by the relevant planning authority. The ExA considers that this requirement should be developed by adding that no construction work shall take place on Sundays or public holidays and that the time limitation should also apply to demolition works. Accordingly, the wording has been amended in the ExA's recommended draft DCO.
- 7.86 Paragraph (2) states that if work is proposed outside the set hours, risk assessments and method statements will be submitted and local residents advised. In these circumstances, the relevant planning authority would have a full and open basis on which to make its decision and no further qualification is necessary.

Requirement 24 - Piling

- 7.87 For the reasons given in preceding paragraphs, the ExA considers that the wording '...within the constraints of the environmental information assessed and subjected to examination', should be added to paragraphs (1) and (2).

Requirement 25 - Construction of Work Nos 6a and 6b

- 7.88 In the interests of clarity, the ExA considers that sub-paragraph 2(a) should be amended to delete the words '..., which involve the greatest increases in noise and movement in relation to the North Killingholme Haven Pits,...' For the same reason, the phrase following should read '...are only carried out...'

Requirement 27 - Control of dust emissions during operation

- 7.89 Requirement 27 specifies a scheme for the management and mitigation of dust emissions from solid fuels during operation, substantially in accordance with the Outline Coal dust Management Plan [REP-189] APP EIA206/APP1 dated January 2014, which was introduced into the examination.
- 7.90 Sub-paragraph 2(f), requiring details of the type of railway wagons to be used for the delivery of solid fuel, was added during

the course of the examination. This information is necessary in the interests of maximising containment of dust within the wagons

Requirement 28 - Construction and security lighting scheme

Requirement 29 - Permanent lighting scheme

- 7.91 For the reasons given in preceding paragraphs, the ExA considers that the wording '...within the constraints of the environmental information assessed and subjected to examination', should be added to paragraphs (1) and (3) of Requirements 28 and 29.
- 7.92 During the course of the examination, the requirement for details of aviation warning lights attached to the flare tower were included as sub-paragraph 2(d). This is in the interests of aviation safety.

Requirement 30 - Bat mitigation strategy

Requirement 31 - Water vole mitigation strategy

- 7.93 Requirements 30 and 31 both specify in paragraph (1) that a written strategy for the mitigation of the development's impacts, as outlined in the ES, shall be submitted to and approved by the relevant planning authority. Approval would therefore be within the constraints of the environmental information subjected to examination.
- 7.94 The ExA considers that to the tailpiece of both requirements (unless otherwise agreed by the relevant planning authority), should be added '...within the constraints of the environmental information assessed and subjected to examination'. This is for the reasons given previously.
- 7.95 The ExA suggests adding paragraph (4) to Requirement 30 specifying NE's approval of a written strategy for surveys to adequately inform a decision on whether a European Protected Species (EPS) licence is required.
- 7.96 Whilst the decision on whether to apply for an EPS licence lies with the applicant, and C.GEN has clearly stated that in its view a licence is not necessary [REP-200], NE recorded in the SoCG with the applicant [REP-234 at paragraph 10.10.1] that it does not believe the current survey information is an adequate basis on which to make this decision. The ExA considers that it would be prudent for NE to be satisfied of the adequacy of the survey information.

Requirements 34, 35 and 36 - CCS

- 7.97 The ExA is satisfied that the requirements take account of the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013. Requirement 36 has been expanded between the applicant's first and final draft DCOs to take account of the

need for a system of collection, transmission and storage to be in place before operation as an IGCC power plant.

Requirement 42 - Requirements for written approval, etc.

- 7.98 This Requirement has developed over the examination period to make clear that approvals should be in writing and written schemes shall include such illustrations as are necessary and appropriate. This is for the avoidance of doubt.

ADDITIONAL REQUIREMENTS INTRODUCED DURING THE EXAMINATION

Requirement 22 - Control of noise during operation

- 7.99 A scheme limiting noise levels at two locations in the vicinity of the Site of Special Scientific Interest (SSSI) shown on Figure 10.1 [APP-050] is to be submitted and approved by the relevant planning authority. The Requirement was introduced during the course of the examination following concerns expressed by NE [RR-027], LWT [RR-018], and mitigation methods proposed by the applicant which were accepted by NE in the SoCG [REP-234]. The Requirement is aimed at protecting wildlife from in combination noise effects during operation.
- 7.100 The ExA considers that the wording '...within the constraints of the environmental information assessed and subjected to examination' should be added to paragraph (1) for the reasons previously given.

Requirement 44 - Flood warning and evacuation plan

- 7.101 This Requirement was introduced in the interests of public safety.

Requirement 45 - Aerodrome safeguarding

- 7.102 This requirement was introduced to protect aviation interests.

Requirement 46 - Train speed at North Killingholme Haven Pits

Requirement 47 - Acoustic hoarding

Requirement 48 - Visual Attenuation of Train Movements

Requirement 49 - Control of construction at North Killingholme Haven Pits

- 7.103 These requirements were introduced, following concerns expressed by NE and LWT, to protect avian wildlife at the NKHP SPA, in particular the black tailed godwit, as described in paragraphs 5.51 to 5.61 above [HR-114]. This would be achieved by limiting noise and visual effects. The mitigation measures were

accepted by NE [REP-284 and REP-234] as capable of maintaining the integrity of the SPA.

- 7.104 The ExA considers that these measures are generally robust, and have been considered openly and in sufficient detail in the examination. They would be effective in that they operate in a Grampian manner and if mitigation is not achieved, no trains would serve the plant. They are likely to be capable of implementation, despite some opposition from Able, since land other than that in Able's ownership might be available if necessary.

GENERAL POINTS

Requirements to be fulfilled prior to the carrying out of any authorised work

- 7.105 Paragraphs 7.09 to 7.15 above set out a difficulty in the width of exclusions used in the applicant's definition of 'commence'. The definition allows the Project to progress to a significant degree before those requirements which must be discharged before commencement are fulfilled.
- 7.106 The applicant has altered the wording to certain requirements in its final draft DCO from 'no part of the authorised development shall commence' to 'no part of the authorised development shall be carried out'. However, the alterations are not consistent and in not all instances where the change would be appropriate has it been made. The ExA has, therefore, made further adjustments in its recommended version of the draft DCO.

DEEMED MARINE LICENCE

- 7.107 The ExA has recommended in paras 6.162 and 6.294, above that Schedule 5 of the applicant's final draft DCO [APP-114] be amended to:
- (a) remove those plot numbers and that purpose related to 'ecological improvements' – plots 05/02, 05/03 and 07/01
 - (b) remove those plot numbers and those purposes related to 'gas supply pipes' and to 'electricity transmission cables'. These are listed in para. 6.294.
- 7.108 The reasons for this are, first, that in respect of all these plots, the ExA has recommended that the application for powers of CA for new rights over those plots should be refused. Second, in respect of these plots for purposes related to 'gas supply pipes' and to 'electricity transmission cables', these works have not been applied for in the DCO application and, therefore, will not be consented if the Secretary of State decides to grant consent for the recommended DCO. Further, a number of the plots contained in Schedule 5 (listed in para 6.296) had already been removed from the order limits by virtue of the ExA's procedural decisions

dated 4 October 2013 [DEC-006] and 3 March 2014 [DEC-016] following applications from the applicant. They cannot therefore be subject to any powers contained in the DCO.

- 7.109 The Deemed Marine Licence (DML) is required for the construction and operation of Work No. 1, the combined cycle plant, specifically the works for the intake and discharge of cooling water.

LAND OF WHICH TEMPORARY PERMISSION MAY BE TAKEN

Conditions

- 7.110 The changes to the conditions described were agreed by the Marine Management Organisation (MMO). Condition 6 in the first draft of the DCO required submission of a marine construction environmental management plan (MCEMP) before the carrying out of licensed activities. However, following the first round of written questions [DEC-005] it was agreed that the marine works proposed would not be so extensive as to require an MCEMP and that a Piling Method Statement would be sufficient. Condition 6 was, therefore deleted.

Condition 20 - Cooling water intake conditions

- 7.111 Sub-paragraph 1(f) was added during the examination. It protects the inter-tidal area from harm arising from construction of the cooling water intake.

Conditions 21 to 24 - Piling conditions

Condition 25 - Detailed design (Work No 3a, piled platform, etc.)

- 7.112 These conditions contain safeguards which have been refined and consolidated in examination. Some of the conditions set out in the applicant's first draft of the DCO have been removed in the final draft, to be incorporated in other conditions or in the piling method statement. The ExA is satisfied that the conditions are necessary, robust and would serve their purpose.

OTHER LEGAL AGREEMENTS

- 7.113 The applicant and NLC completed a s106 Agreement under the 1990 Act [APP-113]. It contains obligations relating to the following matters:

- Transport Contribution
- Travel Plan
- HGV Access and Routing
- Combined Heat and Power (CHP)
- Local employment and materials

- 7.114 The first three matters have been considered at paragraphs 4.311, 4.312, 4.323, 4.324 and 4.325 above, in the section of this report on Traffic and Transport.
- 7.115 The matter concerning CHP obliges the applicant to use reasonable endeavours to obtain customers for heat and power produced by the Project. This is consistent with the aims of NPS EN-1 in Section 4.6, Consideration of Combined Heat and Power.
- 7.116 Concerning local employment and materials, the obligation requires the approval by NLC of a Local Employment Scheme before implementation of the Project. The Scheme would include details of how employment and training opportunities would be offered locally, together with monitoring procedures and a time table for implementation of the Scheme. The obligation meets the aims of local policy generally.
- 7.117 The tests set out at paragraph 204 of the NPPF, for the acceptability of planning obligations, are that they should be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The ExA considers that the obligations within the s106 Agreement satisfy these tests.

8 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

- 8.1 The Examining Authority (ExA) considers that the application is in line with, and supports, the Government's policy objectives for energy as set out in National Policy Statements EN-1 (Overarching National Policy Statement for Energy) and EN-2 (Fossil Fuel Electricity Generating Infrastructure).
- 8.2 We consider that this project contributes to meeting the need for energy capacity and, in doing so, will bring benefits to the area in terms of economic activity.
- 8.3 We consider that the application fulfils the relevant legal requirements including the UK Government's relevant international obligations.
- 8.4 We consider that, taking into account the mitigation measures set out in the recommended draft DCO, the implementation of the project would not put the UK in breach of the Habitats Directive and would maintain the coherence of Natura 2000. We consider that Requirement 48 of the recommended draft DCO, in Appendix E in this report, is particularly important in this respect.
- 8.5 We conclude that whilst there are impacts of the scheme in terms of traffic, the effect on the local natural and historic environment and visual impact, the recommended draft DCO contains sufficient measures to mitigate those impacts. We conclude, therefore, that the benefits of this proposal would outweigh its impacts.
- 8.6 We conclude that the project as applied for conforms to, and supports, local planning policy.
- 8.7 We have considered the requests for powers to compulsorily acquire land and rights which formed part of the application. We conclude that, in respect of some plots, the requests for powers do not meet the tests set out in statute and in guidance. The majority of such plots are on land for which no application for development is made.
- 8.8 The ExA therefore recommends that the Secretary of State should give consent to the application but should withhold consent for the request for CA in respect of certain specified plots.

APPENDICES

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EXAMINATION LIBRARY

Contents

The following is a list of documents that were submitted during the course of the Examination. The documents are grouped together by document type.

Each document has been given an identification number (e.g. APP1), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning website at the North Killingholme Power Project page:

<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/north-killingholme-power-project/>

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Document type	Reference
Application Documents	APPxxx
Procedural Decisions	DECxxx
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Representations	REPxxx
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Additional Submissions	ASxxx
Section 127	SECxxx

DOC REF	TITLE
APPLICATION DOCUMENTS (APP)	
APP-001	1.1 Covering Letter accompanying the Application.pdf
APP-002	1.3 Copies of newspaper notices.pdf
	Application Form
APP-003	1.2 Application Form for the Proposed North Killingholme (Generating Station) Order.pdf
	Plans & Drawings
APP-004	2.1 to 2.14 Combined Land and Works Plans.pdf
APP-005	2.15 to 2.28 Planning Drawings.pdf
	Draft Development Consent Order
APP-006	3.1 Draft Proposed North Killingholme (Generating Station) Development Consent Order.pdf
APP-007	3.2 Explanatory Memorandum.pdf
APP-083	Draft Proposed North Killingholme (Generating Station) Development Consent Order v2.0
APP-084	Draft Proposed North Killingholme (Generating Station) Development Consent Order with track changes v2.0
APP-085	Draft Proposed North Killingholme (Generating Station) Development Consent Order v3.0
APP-086	Draft Proposed North Killingholme (Generating Station) Development Consent Order v3.0 with track changes
APP-087	Draft Proposed North Killingholme (Generating Station) Development Consent Order v4.0
APP-088	Draft Proposed North Killingholme (Generating Station) Development Consent Order v4.0 - with track changes
APP-089	Draft Proposed North Killingholme (Generating Station) Development Consent Order v4.0 - comparative version (with v3.0)
APP-107	Draft Proposed North Killingholme (Generating Station) Development Consent Order v5.0
APP-108	Draft Proposed North Killingholme (Generating Station) Development Consent Order v5.0 with track changes
APP-114	Draft Proposed North Killingholme (Generating Station) Development Consent Order v6.0 (Final Draft)
	Compulsory Acquisition Information

DOC REF	TITLE
APP-008	4.3 Book of Reference.pdf
	Environmental Statement
APP-009	6.1 Environmental Statement Volume I.pdf
APP-010	6.2 Environmental Statement Volume II - Appendix 3.1 - Indicative Construction Programme.pdf
APP-011	6.2 Environmental Statement Volume II - Appendix 3.2 - Outline Construction Environmental Management Plan.pdf
APP-012	6.2 Environmental Statement Volume II - Appendix 7.1 Phase 1 Habitat Survey Site 1A.pdf
APP-013	6.2 Environmental Statement Volume II - Appendix 7.2 Phase 1 Habitat Survey Site 1B.pdf
APP-014	6.2 Environmental Statement Volume II - Appendix 7.3 Phase 1 Habitat Survey Conveyor.pdf
APP-015	6.2 Environmental Statement Volume II - Appendix 7.4 Bat Survey Report.pdf
APP-102	6.2 Environmental Statement Volume II - Appendix 7.5 Confidential Badger Appendix .pdf
APP-016	6.2 Environmental Statement Volume II - Appendix 7.6 Water Vole Survey Report.pdf
APP-017	6.2 Environmental Statement Volume II - Appendix 7.7 GCN and Breeding Bird Report.pdf
APP-018	6.2 Environmental Statement Volume II - Appendix 7.8 Wintering Bird Report.pdf
APP-019	6.2 Environmental Statement Volume II - Appendix 7.9 Able Reptile Survey Report.pdf
APP-020	6.2 Environmental Statement Volume II - Appendix 7.10 - Killingholme Reptile Report.pdf
APP-021	6.2 Environmental Statement Volume II - Appendix 7.11 - Bird Assemblages Report.pdf
APP-022	6.2 Environmental Statement Volume II - Appendix 8.1 - Cultural Heritage Desk-Based Assessment.pdf
APP-023	6.2 Environmental Statement Volume II - Appendix 8.2 - Setting Study for the Proposed North Killingholme Power Project.pdf
APP-024	6.2 Environmental Statement Volume II - Appendix 8.3 - Supplementary Setting Study.pdf
APP-025	6.2 Environmental Statement Volume II - Appendix 8.4 - WSI for Archaeological Evaluation.pdf
APP-026	6.2 Environmental Statement Volume II - Appendix 9.1 - LI Photography Advice Note 01-11.pdf
APP-027	6.2 Environmental Statement Volume II - Appendix 10.1 - Baseline Survey Noise Monitoring Forms.pdf
APP-028	6.2 Environmental Statement Volume II - Appendix 10.2 - Baseline Survey Calibration Certificates.pdf
APP-029	6.2 Environmental Statement Volume II - Appendix 10.3 - CadnaA - Scenario B.pdf

DOC REF	TITLE
APP-030	6.2 Environmental Statement Volume II - Appendix 10.4 - CadnaA - Scenario E.pdf
APP-031	6.2 Environmental Statement Volume II - Appendix 10.5 - CadnaA - Scenario E - CCI.pdf
APP-032	6.2 Environmental Statement Volume II - Appendix 10.6 - CadnaA - Scenario E - with train deliveries.pdf
APP-033	6.2 Environmental Statement Volume II - Appendix 12.1 - Transport Assessment (including Travel Plan).pdf
APP-034	6.2 Environmental Statement Volume II - Appendix 13.1 AMEP Supplementary Environmental Information.pdf
APP-035	6.2 Environmental Statement Volume II - Appendix 14.1 - Landmark Envirocheck Report.pdf
APP-036	6.2 Environmental Statement Volume II - Appendix 14.2.1 Environmental Site Investigation Report.pdf
APP-037	6.2 Environmental Statement Volume II - Appendix 14.2.2 Environmental Site Investigation Report.pdf
APP-038	6.2 Environmental Statement Volume II - Appendix 14.2.3 Environmental Site Investigation Report.pdf
APP-039	6.2 Environmental Statement Volume II - Appendix 14.2.4 Environmental Site Investigation Report.pdf
APP-040	6.2 Environmental Statement Volume II - Appendix 14.2.5 Environmental Site Investigation Report.pdf
APP-041	6.2 Environmental Statement Volume II - Appendix 14.2.6 Environmental Site Investigation Report.pdf
APP-042	6.2 Environmental Statement Volume II - Appendix 14.2.7 Environmental Site Investigation Report.pdf
APP-043	6.2 Environmental Statement Volume II - Appendix 14.2.8 Environmental Site Investigation Report.pdf
APP-044	6.2 Environmental Statement Volume II - Appendix 14.2.9 Environmental Site Investigation Report.pdf
APP-045	6.2 Environmental Statement Volume II - Appendix 14.2.10 Environmental Site Investigation Report).pdf
APP-046	6.2 Environmental Statement Volume II - Appendix 14.3.1 Geo-Environmental Appraisal.pdf
APP-047	6.2 Environmental Statement Volume II - Appendix 14.3.2 Geo-Environmental Appraisal.pdf
APP-048	6.2 Environmental Statement Volume II - Appendix 14.3.3 Geo-Environmental Appraisal.pdf
APP-049	6.2 Environmental Statement Volume II - Appendix 14.4 Site Specific Risk Assessment.pdf
APP-050	6.3 Environmental Statement Volume III - Figures.pdf
APP-051	6.4 Environmental Statement Non-Technical Summary.pdf
	Reports, Statements and Other Application Documents
APP-052	4.1 Statement of Reasons.pdf

DOC REF	TITLE
APP-053	4.2 Funding Statement.pdf
APP-054	5.1 Consultation Report.pdf
APP-055	5.2 Flood Risk Assessment.pdf
APP-056	5.3 Historic Environment Report.pdf
APP-057	5.4 Consents and licences required under other legislation.pdf
APP-058	5.5 Report to inform Habitats Regulation Assessment.pdf
APP-059	5.6 Natural Features Report.pdf
APP-060	5.7 Statement of Engagement of Section 79(1) Environmental Protection Act 1990.pdf
APP-061	7.1 Grid Connection Statement.pdf
APP-062	7.2 Gas Connection Statement.pdf
APP-063	8.1 Development Consent Obligation Heads of Terms.pdf
APP-064	8.2 Planning Statement.pdf
APP-065	8.3 Design and Access Statement.pdf
APP-066	8.4 CCR Feasibility Study and CCS Design Concept Report.pdf
APP-067	8.5 Combined Heat and Power Assessment.pdf
	Other Documents
APP-074	Core Scenario Transport Assessment
APP-075	Environmental Permit Application
APP-076	Environmental Permits Application, appendix H1 database relating to the Environmental Permits Application.mdb
APP-077	Environmental Permits Application, appendix
APP-078	Interim- construction worker and operational worker travel plans
APP-079	Transport Position Statement 1
APP-080	Transport Position Statement 2
APP-090	Draft s106 Agreement between C.GEN Killingholme Ltd and North Lincolnshire Council
APP-113	Final s106 agreement between C.GEN Killingholme Ltd and North Lincolnshire Council
POST-SUBMISSION CHANGES	
APP-068	130918_EN010038_Errata list.PDF
	Change to Order limit
APP-069	Request by C.GEN Killingholme Ltd to withdraw land from the Order limits
APP-070	Amendments to the Book of Reference relating to the request to withdraw lands from the Order limits
APP-071	Amended land plan 2.10 relating to the proposed changes to the Order limits

DOC REF	TITLE
APP-072	<u>Amended land plan 2.11 relating to the proposed changes to the Order limits</u>
APP-073	<u>Amended land plan 2.9 relating to the proposed changes to the Order limits</u>
	Proposed amendments to the draft DCO
APP-081	<u>Proposed amendments to the draft Development Consent Order by C.GEN Killingholme Ltd</u>
APP-082	<u>Proposed amendments to the draft Development Consent Order by C.GEN Killingholme Ltd, Appendices A-H</u>
APP-091	<u>Amended Book of Reference relating to the changes to the order limit for the North Killingholme Power Project – Changes shown</u>
APP-092	<u>Amended Book of Reference relating to the changes to the order limit for the North Killingholme Power Project – Clean</u>
APP-093	<u>Amended Gas Connection Statement relating to the changes to the order limit for the North Killingholme Power Project – Changes shown</u>
APP-094	<u>Amended Gas Connection Statement relating to the changes to the order limit for the North Killingholme Power Project – Clean</u>
APP-095	<u>Amended Grid Connection Statement relating to the changes to the order limit for the North Killingholme Power Project – Changes shown</u>
APP-096	<u>Amended Grid Connection Statement relating to the changes to the order limit for the North Killingholme Power Project – Clean</u>
APP-097	<u>Amended land plan 2 relating to the changes to the order limit for the North Killingholme Power Project</u>
APP-098	<u>Amended land plan 3 relating to the changes to the order limit for the North Killingholme Power Project</u>
APP-099	<u>Amended land plan 4 relating to the changes to the order limit for the North Killingholme Power Project</u>
APP-100	<u>Amended land plan 5 relating to the changes to the order limit for the North Killingholme Power Project</u>
APP-101	<u>Amended land plan 7 relating to the changes to the order limit for the North Killingholme Power Project</u>
APP-103	<u>Amended land plan 9 relating to the changes to the order limit for the North Killingholme Power Project</u>
APP-104	<u>Amended Statement of Reasons – Changes shown</u>
APP-105	<u>Amended Statement of Reasons – Clean version</u>
APP-106	<u>Submission in Respect of Amendments to the Order Limits</u>
APP-109	<u>Amended Book of Reference (Parts 1-4) relating to the changes to the order limit for the North Killingholme Power Project - Clean</u>
APP-110	<u>Amended Book of Reference (Parts 1-4) relating to the changes to the order limit for the North Killingholme Power Project - Changes Shown</u>
APP-111	<u>Plan to accompany Centrica Protective Provisions</u>
APP-112	<u>Figure 2 of Indicative Routes for Electrical Grid Connection (FINAL)</u>

DOC REF	TITLE
PROJECT DOCUMENTS (PD)	
DEC-001	130419 EN010038 NorthKillingholmeNewPowerStation Acceptance letter_Final
DEC-002	130319 EN010038 S55 Checklist Final
DEC-003	130624 EN010038 Certificates of Compliance with s56 and s59 of the Planning Act 2008 and Reg 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.pdf
DEC-004	130806 EN010038 North Killingholme Rule 6 and 4 Letter.doc
DEC-005	130920 EN010038 North Killingholme Power Project Rule 8 Letter.doc
DEC-006	Procedural Decision Proposed Changes to Order Limits dated 4 October 2013
DEC-007	Notification of Hearings and Site Visit dated 22 October 2013
DEC-008	Draft Procedural Decision and variation to the Examination Timetable dated 18 November 2013
DEC-009	Procedural Decision and variation to the Examination Timetable dated 3 December 2013
DEC-010	North Killingholme Examining Authority's Second Round of Questions, Notices of Hearings, and Variations to the Timetable dated 13 December 2013
DEC-011	Procedural decision and variation to the time table dated 31 January 2014
DEC-012	Notice of Procedural Decision and Variation to the Examination Timetable dated 7 February 2014
DEC-013	Notice of a Procedural Decision and Variation to the Timetable dated 18 February 2014
DEC-014	Procedural Decision letter dated 21 February 2014
DEC-015	Procedural Decision regarding a variation to the timetable dated 25 February 2014
DEC-016	Procedural Decision dated 3 March 2014
DEC-017	Procedural decision issued on 7 March 2014
DEC-018	Procedural decision issued on 10 March 2014
DEC-019	Letter from the Secretary of State for Energy and Climate Change declining request for an extension to the examination
DEC-020	Notification of Completion of ExA Examination (s99)
RELEVANT REPRESENTATIONS (RR)	
RR-001	Civil Aviation Authority
RR-002	Anglian Water Services Limited
RR-003	The Oil and Pipelines Agency (OPA)
RR-004	PJ Cowing, Harbour Master Humber, Associated British Ports
RR-005	Marine Management Organisation
RR-006	English Heritage
RR-007	North Lincolnshire Council

DOC REF	TITLE
RR-008	<u>Shell UK Limited</u>
RR-009	<u>Christine England</u>
RR-010	<u>James Fussey</u>
RR-011	<u>National Grid Plc.</u>
RR-012	<u>Network Rail</u>
RR-013	<u>Ballward Limited</u>
RR-014	<u>C.RO Ports</u>
RR-015	<u>Trinity House</u>
RR-016	<u>EON UK plc</u>
RR-017	<u>Highways Agency</u>
RR-018	<u>Lincolnshire Wildlife Trust</u>
RR-019	<u>Public Health England</u>
RR-020	<u>Environment Agency</u>
RR-021	<u>Friends of the Earth</u>
RR-022	<u>North Lincolnshire Council</u>
RR-023	<u>Able Humber Ports Limited</u>
RR-024	<u>North East Lincolnshire Council</u>
RR-025	<u>Heron Wind Limited, Njord Limited, Vi Aura Limited, Optimus Wind Limited, Breesea Limited and DONG Energy</u>
RR-026	<u>Centrica Plc.</u>
RR-027	<u>Natural England</u>
REPRESENTATIONS (REP)	
	Adequacy of Consultation Representations
REP001	<u>West Lindsey District Council</u>
REP002	<u>Doncaster Council</u>
REP003	<u>North East Lincolnshire Council</u>
REP004	<u>North Lincolnshire Council</u>
	Written representations
REP005	<u>Integrity Matrix by C.GEN Killingholme Ltd</u>
REP006	<u>Written representation by Able Humber Ports Ltd</u>
REP007	<u>Summary of written representation by Able Humber Ports Ltd</u>
REP008	<u>Summary of Able Humber Ports Ltd relevant representation</u>
REP009	<u>Review of North Killingholme Environmental Statement by Able</u>
REP010	<u>Written representation by Environment Agency</u>
REP011	<u>Summary of written representation by Environment Agency</u>
REP012	<u>Summary of Environment Agency relevant representation</u>
REP013	<u>Written representation by Eon</u>
REP014	<u>Written representation by Mr Caley on behalf of Ms England</u>
REP015	<u>Written representation by National Grid</u>

DOC REF	TITLE
REP016	<u>Written representation by National Grid appendix 1</u>
REP017	<u>Written representation by National Grid appendix 2</u>
REP018	<u>Written representation by National Grid appendix 3</u>
REP019	<u>Written representation by Natural England</u>
REP020	<u>Summary of written representation by Natural England</u>
REP021	<u>Written Representation by Natural England, Annex 1</u>
REP022	<u>Written Representation by Natural England, Annex b</u>
REP023	<u>Written Representation by Network Rail</u>
REP024	<u>Written Representation by Network Rail Annex 1</u>
REP025	<u>Written Representation by Network Rail annex 2</u>
REP026	<u>Written Representation by Network Rail Annex 3</u>
REP027	<u>Written representation by Network Rail Annex 4</u>
REP028	<u>Written representation by Network Rail, Annex 5</u>
REP029	<u>Written representation by Shell UK Ltd</u>
REP030	<u>Written Representation by SMart Wind</u>
REP031	<u>Summary of Written Representation by SMart Wind</u>
REP032	<u>Written Representation by SMart Wind, Appendix 1</u>
REP033	<u>Written Representation by SMart Wind, Appendix 2</u>
REP034	<u>Written Representation by SMart Wind, Appendix 3</u>
REP035	<u>Written Representation by SMart Wind, Appendix 4</u>
REP036	<u>Written Representation by SMart Wind, Appendix 5</u>
REP037	<u>Written Representation by SMart Wind, appendix 6</u>
REP038	<u>Written Representation by SMart Wind, appendix 7</u>
REP039	<u>Written Representation by SMart Wind, appendix 8</u>
REP040	<u>Written Representation by SMart Wind, appendix 9</u>
REP041	<u>Written Representation by SMart Wind, appendix 10</u>
REP042	<u>Written Representation by SMart Wind, appendix 11</u>
REP043	<u>Written Representation by SMart Wind, appendix 12</u>
REP044	<u>Written Representation by SMart Wind, appendix 13</u>
REP045	<u>Mr Fussey</u>
REP046	<u>Written Representation by North East Lincolnshire</u>
REP047	<u>Written Representation by Centrica</u>
REP048	<u>Written Representation appendices by Centrica</u>
REP049	<u>Summary of Centrica's Written Representation by Centrica</u>
REP050	<u>Written representation by the MMO</u>
REP051	<u>Written representation by HSE</u>
	Statement of Common Ground
REP052	<u>Statement of Common ground between C.GEN Killingholme Ltd and English Heritage</u>
REP053	<u>Statement of Common Ground between C.GEN Killingholme Ltd and Natural England and MMO</u>
REP054	<u>Statement of Common Ground between C.GEN Killingholme Ltd and the Environment Agency</u>

DOC REF	TITLE
REP055	<u>Statement of Common Ground between North Lincolnshire Council and C.GEN Killingholme Ltd relating to archaeology/designated sites</u>
REP056	<u>Statement of Common Ground between North Lincolnshire Council and C.GEN Killingholme Ltd relating to environmental impacts for local residents</u>
REP057	<u>Statement of Common Ground between North Lincolnshire Council and C.GEN Killingholme Ltd relating to the Draft Development Consent Order</u>
REP058	<u>Progress report on the SoCG between MMO and C.GEN Killingholme Ltd</u>
REP059	<u>Statement by C.GEN Killingholme Ltd relating to the preparation of Statement of Common Ground</u>
REP233	<u>Final Statement of Common Ground between C.GEN Killingholme Ltd and the Environment Agency</u>
REP234	<u>Statement of Common Ground with Natural England (signed)</u>
REP238	<u>Statement of Common Ground with Natural England (unsigned)</u>
REP274	<u>Position statement in relation to Statements of Common Ground</u>
REP275	<u>Statement of Common Ground with English Heritage (signed)</u>
REP276	<u>Statement of Common Ground with Highways Agency regarding Transport (signed)</u>
REP277	<u>Statement of Common Ground with North East Lincolnshire Council and the Highways Agency regarding Transport (unsigned)</u>
REP278	<u>Statement of Common Ground with North East Lincolnshire Council regarding Transport (signed)</u>
REP279	<u>Statement of Common Ground with North Lincolnshire Council, excluding Archaeology (unsigned)</u>
REP280	<u>Statement of Common Ground with North Lincolnshire Council - Archaeology (signed)</u>
REP281	<u>Statement of Common Ground with North Lincolnshire Council (signed)</u>
REP282	<u>Statement of Common Ground with North Lincolnshire Council regarding Archaeology (unsigned) - Appendices</u>
REP295	<u>Statement of Common Ground with North East Lincolnshire Council and the Highways Agency regarding Transport (signed) - With Appendices</u>
	Local Impact Reports
REP060	<u>Local Impact Report by North Lincolnshire Council</u>
	First round of questions
REP061	<u>First round of question responses from English Heritage</u>
REP062	<u>First round of Question responses from Environment Agency</u>

DOC REF	TITLE
	<u>First round of question responses from Environment Agency - Amendments to OP13 and OP16 responses</u>
REP063	<u>First round of Question responses from Natural England</u>
REP064	<u>First round of question responses from North Lincolnshire Council</u>
REP065	North Lincolnshire Council response to Chapter 13 - Biodiversity & Ecology (Confidential)
REP066	<u>First round of question responses from the MMO</u>
REP067	<u>First round of question responses from Able Humber Ports Ltd</u>
REP068	<u>First round of question responses from Associated British Ports</u>
REP069	<u>First round of question responses from C. RO Ports Killingholme Ltd</u>
REP070	<u>Applicant, Cover Letter for the rule 8 deadline of 14 October 2013, IP ref NKIL-0001</u>
REP071	<u>First round of Question responses from C.GEN Killingholme Ltd (Compulsory Acquisition)</u>
REP072	<u>First round of Question responses from C.GEN Killingholme Ltd (Compulsory Acquisition), appendix 1</u>
REP073	<u>First round of Question responses from C.GEN Killingholme Ltd (Compulsory Acquisition), appendix 2</u>
REP074	<u>First round of Question responses from C.GEN Killingholme Ltd (Compulsory Acquisition), appendix 3</u>
REP075	Reference not used
REP076	<u>First round of Question responses from C.GEN Killingholme Ltd (Compulsory Acquisition), appendix 5</u>
REP077	<u>First round of Question responses from C.GEN Killingholme Ltd (Design, Layout and Visibility)</u>
REP078	<u>First round of Question responses from C.GEN Killingholme Ltd (Design, Layout and Visibility), appendix 1</u>
REP079	<u>First round of Question responses from C.GEN Killingholme Ltd (Design, Layout and Visibility), appendix 2</u>
REP080	<u>First round of Question responses from C.GEN Killingholme Ltd (Development Consent Order)</u>
REP081	<u>First round of Question responses from C.GEN Killingholme Ltd (Development Consent Order) , list of appendices</u>
REP082	<u>First round of Question responses from C.GEN Killingholme Ltd (Development Consent Order) , Appendix Correspondence between DLA Piper and National Grid</u>
REP083	<u>First round of Question responses from C.GEN Killingholme Ltd (Development Consent Order) , Appendix Letter to the Environment Agency</u>
REP084	<u>First round of Question responses from C.GEN Killingholme Ltd (Development Consent Order) , Appendix Correspondence between DLA Piper and Centrica</u>

DOC REF	TITLE
REP085	<u>First round of Question responses from C.GEN Killingholme Ltd (Development Consent Order), Appendix Differences between the draft DCO and the model provisions in track changes</u>
REP086	<u>First round of Question responses from C.GEN Killingholme Ltd (Development Consent Order), Appendix Correspondence between DLA Piper and Network Rail</u>
REP087	<u>First round of Question responses from C.GEN Killingholme Ltd (Economy and Social Impacts)</u>
REP088	<u>First round of Question responses from C.GEN Killingholme Ltd (Economy and Social Impacts), appendix 1</u>
REP089	<u>First round of question responses (EIA) by C.GEN Killingholme Ltd</u>
REP090	<u>First round of question responses (EIA) by C.GEN Killingholme Ltd - Appendix 1</u>
REP091	<u>First Round of Question responses from C.GEN Killingholme Ltd (Other environmental matters part 1)</u>
REP092	<u>First Round of Question responses from C.GEN Killingholme Ltd (Other Environmental matters part 1) appendix 1</u>
REP093	<u>First round of Question responses from C.GEN Killingholme Ltd (Other environmental matters part 2)</u>
REP094	<u>First round of Question responses from C.GEN Killingholme Ltd (Other Environmental Matters), Appendix EM04APP1(Raw Data).zip</u>
REP095	<u>First round of question responses from C.GEN Killingholme Ltd (Other Environmental Matters) - Appendix EM01APP1</u>
REP096	<u>First round of question responses from C.GEN Killingholme Ltd (Other Environmental Matters) - Appendix EM01APP1 Part 2</u>
REP097	<u>First round of Question responses from C.GEN Killingholme Ltd (Other Environmental Matters) Appendix EM04APP1</u>
REP098	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2)</u>
REP099	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), list of appendices</u>
REP100	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix CMACS Study Area</u>
REP101	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix CMACS Survey Results</u>
REP102	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix Figure of East Halton Killingholme Winter Birds 2007/2008 Survey Area</u>

DOC REF	TITLE
REP103	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix Plans showing ditches</u>
REP104	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix AMEP compensation land - Cherry Cobb Sands</u>
REP105	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix Correspondence between the Environment Agency and the MMO</u>
REP106	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix Integrity Matrix</u>
REP107	<u>First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix H18 APP 1</u>
REP108	First round of Question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature conservation 1 of 2), appendix Assessment of the effects on badgers and proposals for their translocation (Confidential)
REP109	<u>First round of Question responses from C.GEN Killingholme Ltd (The Historic and Archaeological Environment)</u>
REP110	<u>First round of Question responses from C.GEN Killingholme Ltd (The Historic and Archaeological Environment), appendix 1</u>
REP111	<u>First round of Question responses from C.GEN Killingholme Ltd (The Historic and Archaeological Environment), appendix 2</u>
REP112	<u>First round of Question responses from C.GEN Killingholme Ltd (The Historic and Archaeological Environment), appendix 3</u>
REP113	<u>First round of Question responses from C.GEN Killingholme Ltd (Operational Issues)</u>
REP114	<u>First round of Question responses from C.GEN Killingholme Ltd (Operational Issues), appendix 1</u>
REP115	<u>First round of Question responses from C.GEN Killingholme Ltd (Operational Issues 2 of 3), appendix 2</u>
REP116	<u>First round of Question responses from C.GEN Killingholme Ltd (Operational Issues 3 of 3) appendix 3</u>
REP117	<u>First round of Question responses from C.GEN Killingholme Ltd (Transport and Traffic)</u>
REP118	<u>First round of Question responses from C.GEN Killingholme Ltd (Transport and Traffic), appendix 1</u>
REP119	<u>First round of question responses from C.GEN Killingholme Ltd, Environmental Statement Summary Table (late submission)</u>
	Correspondence

DOC REF	TITLE
REP120	Applicant, Cover Letter for the rule 8 deadline of 14 October 2013, IP ref NKIL-0001
REP121	Cover letter for the deadline of the rule 8 deadline of 11 November 2013
REP122	Letter from Environment Agency relating to environmental permits applications
REP244	Email from Shell regarding signing of undertakings
REP286	Email from C.GEN Killingholme Ltd in relation to the amended Figure 2 of the revised Grid Connection Statement
REP287	Email from National Grid Electricity Transmission Plc. in relation to the amended Figure 2 of the revised Grid Connection Statement
REP288	Email from Shell UK relating to withdrawal of representations
REP296	Letter from the Environment Agency confirming that the environmental permits application has been duly made
	Comments
REP123	Introduction to C.GEN Killingholme Ltd's submissions relating to the deadline of 11 November 2013
	Comments on Relevant Representations
REP124	Response to RR - Operational Issues
REP125	Appendices to the Response to RR Part 1 (Applicant)
REP126	Appendices to the Response to RR Part 2 (Applicant)
REP127	Appendices to the Response to RR Part 3 (Applicant)
REP128	Appendices to the Response to RR Part 4 (Applicant)
REP129	Appendices to the Response to RR Part 5 (Applicant)
REP130	Appendices to the Response to RR Part 6 (Applicant)
	Comments on first round of question responses
REP131	C.GEN Killingholme Ltd comments on Able Humber Ports Ltd responses to the first round of questions
REP132	C.GEN Killingholme Ltd comments on Network Rail responses to the first round of questions
REP133	C.GEN Killingholme Ltd comments on the Environment Agency responses to the first round of questions
REP134	C.GEN Killingholme Ltd comments on the Environment Agency responses to the first round of questions - Appendices
REP135	C.GEN Killingholme Ltd comments on North Lincolnshire Council responses to the first round of questions
REP136	C.GEN Killingholme Ltd comments on North Lincolnshire Council responses to the first round of questions - Appendices

DOC REF	TITLE
REP137	<u>C.GEN Killingholme Ltd comments on Associated British Ports responses to the first round of questions</u>
REP138	<u>C.GEN Killingholme Ltd comments on Natural England responses to the first round of questions</u>
REP139	<u>C.GEN Killingholme Ltd comments on Natural England responses to the first round of questions - Appendices</u>
REP140	<u>C.GEN Killingholme Ltd comments on MMO responses to the first round of questions</u>
REP141	<u>C.GEN Killingholme Ltd comments on MMO responses to the first round of questions - Appendices</u>
REP142	<u>Able Humber Ports Ltd comments on C.GEN Killingholme Ltd responses to the first round of questions</u>
REP143	<u>SMart Wind comments on C.GEN Killingholme Ltd responses to the first round of questions</u>
REP144	<u>SMart Wind comments on C.GEN Killingholme Ltd responses to first round of questions - Appendices</u>
REP145	<u>C.GEN Killingholme Ltd comments on the Environment Agency amended response to questions OP13 and OP16</u>
	Comments on Written Representations
REP146	<u>C.GEN Killingholme Ltd comments on Written Representation by E.ON</u>
REP147	<u>C.GEN Killingholme Ltd comments on Written Representation by Mr Fussey</u>
REP148	<u>C.GEN Killingholme Ltd comments on Written Representation by Mrs Christine England</u>
REP149	<u>C.GEN Killingholme Ltd comments on Written Representation by Network Rail</u>
REP150	<u>C.GEN Killingholme Ltd comments on Written Representation by North East Lincolnshire Council</u>
REP151	<u>C.GEN Killingholme Ltd comments on Written Representation by North East Lincolnshire Council - Appendices</u>
REP152	<u>C.GEN Killingholme Ltd comments on Written Representation by National Grid</u>
REP153	<u>C.GEN Killingholme Ltd Comments on Written Representation by National Grid - Appendix</u>
REP154	<u>C.GEN Killingholme Ltd Comments on Written Representation by Able Humber Ports Limited</u>
REP155	<u>C.GEN Killingholme Ltd Comments on Written Representation by Able Humber Ports Limited - Appendix</u>
REP156	<u>C.GEN Killingholme Ltd Comments on Written Representation by Centrica Plc.</u>
REP157	<u>C.GEN Killingholme Ltd Comments on Written Representation by Centrica Appendix</u>

DOC REF	TITLE
REP158	<u>C.GEN Killingholme Ltd comments on Written Representation by Shell UK Ltd</u>
REP159	<u>C.GEN Killingholme Ltd Comments on Written Representation by SMart Wind</u>
REP160	<u>C.GEN Killingholme Ltd Comments on Written Representation by The Environment Agency</u>
REP161	<u>C.GEN Killingholme Ltd Comments on Written Representation by the Environment Agency - Appendix</u>
REP162	<u>C.GEN Killingholme Ltd Comments on Written Representation by the Marine Management Organisation</u>
REP163	<u>C.GEN Killingholme Ltd Comments on Written Representation by Natural England</u>
REP164	<u>C.GEN Killingholme Ltd Comments on Written Representation by Natural England - Appendix</u>
REP165	<u>C.GEN Killingholme Ltd Comments on Written Representation by Natural England - Appendix 2.xlsx</u>
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REP239	<u>Centrica comments on explanatory note relating to replanting</u>
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REP315	<u>C.GEN Killingholme Ltd Killingholme limited Paper of Amendments in regards to the final draft Development Consent Order</u>
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REP290	<u>C.GEN Killingholme Ltd response to letter from Associated British Ports received on 19 February 2014</u>
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REP298	<u>C.GEN Killingholme Ltd submission in regards to procedural decision with the deadline of 11 March 2014</u>
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REP300	<u>C.GEN Killingholme Ltd comments on Centrica summary of rep given at hearing 11-12</u>
REP301	<u>Comments by Centrica on C.GEN Killingholme Ltd's Paper of amendments to DCO</u>
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REP252	<u>C.GEN Killingholme Ltd comments on Associated British Ports responses to the second round of questions</u>
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REP254	<u>C.GEN Killingholme Ltd comments on the Environment Agency responses to the second round of questions</u>
REP255	<u>C.GEN Killingholme Ltd comments on Marine Management Organisation responses to the second round of questions</u>
REP256	<u>C.GEN Killingholme Ltd comments on National Grid Electricity Transmission PLC responses to the second round of questions</u>
REP257	Reference not used
REP258	<u>C.GEN Killingholme Ltd comments on National Grid Gas PLC responses to the second round of questions</u>
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REP237	<u>Second round of question responses from C.GEN Killingholme Ltd (Habitats, Ecology and Nature Conservation), Noise Compliance Appendices</u>
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REP202	<u>Second round of question responses from C.GEN Killingholme Ltd (Historic and Archaeological Environment), Able Logistics Park appendices</u>
REP203	<u>Second round of question responses from C.GEN Killingholme Ltd (Historic and Archaeological Environment), Plan of possible view from Goxhill Hall</u>
REP204	<u>Second round of question responses from C.GEN Killingholme Ltd (Historic and Archaeological Environment), Undesignated Heritage Assets within Connections Corridors</u>
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REP293	<u>C.GEN Killingholme Ltd response to Rule 17 issued on 25 February 2014 relating to Able Humber Ports Ltd</u>

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REP246	The Examining Authority's Report on the Implications for European Sites (RIES)
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HR-001	HR-001 Preliminary Meeting audio recording 11 September 2013 part 1.mp3
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HR-041	Issue specific hearing on other Environmental Matters - Part 1
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HR-044	Issue specific hearing on the Historic and Archaeological (AM).mp3
HR-045	Issue specific hearing on Design, Layout and Visibility (PM)
	Summaries
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HR-048	Index of C.GEN Killingholme Ltd's written summaries and appendices of oral representations given at hearings held between 20-29 November 2013.pdf
HR-049	Summary of C.GEN Killingholme Ltd oral representation relating to the Issue Specific Hearing held on 20 November 2013.pdf
HR-050	Summary of C.GEN Killingholme Ltd oral representation relating to the Issue Specific Hearing held on 20 November 2013 - Appendix 1 Amended Draft DCO (Clean version).pdf
HR-051	Summary of C.GEN Killingholme Ltd oral representation relating to the Issue Specific Hearing held on 20 November 2013 - Appendix 2 Amended Draft DCO (Changes shown).pdf
HR-052	Summary of C.GEN Killingholme Ltd oral representation relating to the Compulsory Acquisition Hearings held on 21-22 November 2013.pdf
HR-053	Summary of C.GEN Killingholme Ltd oral representation relating to the Compulsory Acquisition Hearings on 21-22 November 2013 - Appendix 1.pdf
HR-054	Summary of C.GEN Killingholme Ltd oral representation relating to the Compulsory Acquisition Hearings held on 21-22 November 2013 - Appendix 2.pdf
HR-055	Summary of C.GEN Killingholme Ltd oral representation relating to the Compulsory Acquisition Hearings held on 21-22 November 2013 - Appendix 3.pdf
HR-056	Summary of C.GEN Killingholme Ltd oral representation relating to the Issue Specific Hearing held on 26 November 2013
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HR-060	<u>Summary of C.GEN Killingholme Ltd oral representation relating to the Issue Specific Hearing held on 27 November 2013</u>
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HR-065	<u>Summary of C.GEN Killingholme Ltd oral representation relating to the Issue Specific Hearing held on 28 November 2013.pdf</u>
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HR-070	<u>Summary of Able Humber Ports Ltd oral representation relating to the Issue Specific Hearing held on 20 November 2013</u>
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HR-072	<u>Summary of Able Humber Ports Ltd oral representation relating to the Issue Specific Hearing held on 26 November 2013</u>
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HR-075	<u>Summary of Able Humber Ports Ltd oral representation relating to the Issue Specific Hearing held on 28 November 2013</u>
HR-076	<u>Summary of Able Humber Ports Ltd oral representation relating to the Issue Specific Hearing held on 28 November 2013 - Appendices</u>
HR-077	<u>Summary of Centrica Plc. oral representation relating to the Issue Specific Hearing held on 20 November 2013 and the Compulsory Acquisition Hearing held on 21 November 2013.pdf</u>
HR-078	<u>Summary of the Environment Agency's oral representation relating to the Issue Specific Hearing held on 20 November 2013.pdf</u>

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HR-079	Summary of the Environment Agency's oral representation relating to the Issue Specific Hearing held on 27 November 2013
HR-080	Summary of the Environment Agency's oral representation relating to the Issue Specific Hearing held on 28 November 2013
HR-081	Summary of Marine Management Organisation oral representation relating to the Issue Specific Hearing held on 20 November 2013.pdf
HR-082	Summary of Network Rail's oral representation relating to the Issue Specific Hearing held on 20 November 2013.pdf
HR-083	Summary of National Grid's oral representation relating to the Issue Specific Hearing held on 20 November 2013 and the Compulsory Acquisition Hearings on 21-22 November 2013.pdf
HR-084	Summary of Natural England's oral representation relating to the Issue Specific Hearing held on 27 November 2013
HR-085	Summary of Natural England's oral representation relating to the Issue Specific Hearing held on 27 November 2013 - Appendix 1 - 2006-2008
HR-086	Summary of Natural England's oral representation relating to the Issue Specific Hearing held on 27 November 2013 - Appendix 2 - 2010-2011
HR-087	Summary of Natural England's oral representation relating to the Issue Specific Hearing held on 27 November 2013 - Supplementary information requested by the Examination Authority (British Trust for Ornithology research report no. 636)
HR-088	Summary of North East Lincolnshire Council's oral representation relating to the Issue Specific Hearing held on 26 November 2013
HR-089	Supplementary information relating to Able Logistics Park provided by North Lincolnshire Council
HR-090	Summary of SMart Wind's oral representation relating to the Issue Specific Hearing held on 20 November 2013 and Compulsory Acquisition Hearings held on 21-22 November 2013.pdf
	Hearings 3-7 and 10 to 14 February 2014
HR-091	Notice of Issue Specific Hearings (4 - 6 and 12 - 13 February 2014)
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HR-101	Summary of Able Humber Ports Ltd oral representation relating to the Issue Specific hearing held on 4 February 2014
HR-102	Summary of Environment Agency oral representation relating to the Issue Specific hearing held on 4 February 2014
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HR-106	<u>Summary of C.GEN Killingholme Ltd.'s oral rep relating to the ISH held on 5 February 2014, appendix B</u>
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HR-108	<u>Summary of C.GEN Killingholme Ltd.'s oral rep relating to the ISH held on 5 February 2014, appendix D</u>
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HR-125	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the CAH held on 11-13 Feb 2014</u>
HR-126	<u>Information regarding the study of replanting of the Centrica power station</u>
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HR-128	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the CAH held on 11-13 Feb 2014, appendix B</u>

DOC REF	TITLE
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HR-130	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the CAH held on 11-13 Feb 2014, appendix D</u>
HR-131	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the CAH held on 11-13 Feb 2014, appendix E</u>
HR-132	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the CAH held on 11-13 Feb 2014, Appendix F</u>
HR-133	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the CAH held on 11-13 Feb 2014, appendix H</u>
HR-134	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the CAH held on 11-13 Feb 2014, appendix I</u>
HR-135	<u>Summary of Able Humber Ports Ltd oral representation relating to the Compulsory Acquisition and S.127 hearings held on 11-12 February 2014</u>
HR-136	<u>Summary of Mr Caley's oral representation, on behalf of Mrs England, relating to the Compulsory Acquisition Hearing held 13 February 2014</u>
HR-137	<u>Summary of Centrica oral representation relating to the Compulsory Acquisition and S.127 hearings held on 11-12 February 2014</u>
HR-138	<u>Summary of Mr Fussey's Oral Representation Relating to the Compulsory Acquisition Hearing held on 13 February 2014</u>
HR-139	<u>Summary of National Grid Gas Plc. and National Grid Electricity Transmission Plc. oral representation relating to the Compulsory Acquisition and S.127 hearings held on 11-12 February 2014</u>
HR-140	<u>Summary of Network Rail oral representation relating to the Compulsory Acquisition and S.127 hearings held on 11-12 February 2014</u>
HR-141	<u>Summary of SMart Wind oral representation relating to the Compulsory Acquisition and S.127 hearing held on 12 February 2014</u>
HR-142	<u>Request for s127 hearing on 12 February 2014 by SMart Wind</u>
HR-143	<u>Section 127 Hearing Part 1</u>
HR-144	<u>Section 127 Hearing Part 2</u>
HR-145	<u>Section 127 Hearings Agenda (12 - 13 February)</u>
HR-146	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the S.127 hearing held on 12 Feb 2014</u>
HR-147	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the S.127 hearing held on 12 Feb 2014, appendix A</u>
HR-148	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the S.127 hearing held on 12 Feb 2014, appendix B</u>
HR-149	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the S.127 hearing held on 12 Feb 2014, appendix C</u>
HR-150	<u>Summary of C.GEN Killingholme Ltd oral rep relating to the S.127 hearing held on 12 Feb 2014, appendix D</u>
Project Documents	
	EIA Scoping

DOC REF	TITLE
PD-001	110601 EN010038 642570 Scoping Report
PD-002	110708 EN010038 651545 Scoping Opinion.doc
PD-003	110708 EN010038 713855 Late responses ONLINE.PDF
	Meeting notes
PD-004	111130 EN010038 C GEN Killingholme Ltd Meeting Notes FINAL.pdf
	Environmental Information
PD-005	Transboundary Screening Matrix
ADDITIONAL SUBMISSIONS (AS)	
AS-001	Reference not used
AS-002	Reference not used
AS-003	Reference not used
AS-004	Reference not used
AS-005	Reference not used
AS-006	Submission from the Homes and Communities Agency relating to changes to the order limit
AS-007	Submission from SMart Wind, Heron Wind Ltd, Njord Ltd, Vi Aura Ltd, Optimus Wind Ltd, Breesea Ltd and Dong Energy
AS-008	C.GEN Killingholme Ltd.'s comments on the submissions relating to the change to the order limit
AS-009	Additional submission from Anglian Water
AS-010	Additional submission from Anglian Water, Appendix
AS-011	Additional Submission from Mr Fussey dated 5 December 2013
AS-012	Additional Submission by Mr Fussey dated 29 January 2014
AS-013	Letter from Leonards acting for Christine England dated 3 February 2014
AS-014	Letter from Leonards on behalf of Christine England dated 10 Feb 2014
AS-015	Letter from Leonards on behalf of Christine England dated 7 Feb 2014
AS-016	Additional Submission by Mr Fussey received 28 February 2014
AS-017	Additional representation by Leonards on behalf of Mrs England received 28 February 2014
AS-018	Additional Submission by SMart Wind
AS-019	Additional Submission from Associated British Ports
AS-020	Position statement relating to National Grid land
AS-021	SMart Winds comments on Part 7 of Protective Provisions
AS-022	C.GEN Killingholme Ltd commentary on SMart Wind Protective Provisions
AS-023	Letter from SMart Wind formally requesting an extension to the examination
AS-024	Email from C.GEN Killingholme Ltd regarding the request from SMart Wind for an extension to the examination

DOC REF	TITLE
SECTION 127 (SEC)	
SEC-001	<u>20 November 2013 Letter to SoS for Energy & Climate Change - s.127 Application</u>
SEC-002	<u>20 November 2013 Letter to SoS for Environment Food & Rural Affairs - s.127 Application</u>
SEC-003	<u>20 November 2013 Letter to SoS for Transport - s.127 Application</u>
SEC-004	<u>Anglian Water Services Ltd s.127 Appointment Letter</u>
SEC-005	<u>Associated British Ports s127 Appointment Letter</u>
SEC-006	<u>Book of Reference - s.127 material</u>
SEC-007	<u>C.GEN Killingholme Ltd Land Plans Sheet 10 (A1), 28 August 2013</u>
SEC-008	<u>C.GEN Killingholme Ltd Land Plans Sheet 11 (A1), 28 August 2013</u>
SEC-009	<u>C.GEN Killingholme Ltd Land Plans Sheet 9 (A1), 28 August 2013</u>
SEC-010	<u>Centrica KPS Ltd s127 Appointment Letter</u>
SEC-011	<u>Centrica Storage Ltd s127 Appointment Letter</u>
SEC-012	<u>Combined Land & Works Plans - s.127 material</u>
SEC-013	<u>DCO Draft Order - s.127 material</u>
SEC-014	<u>E.ON UK Gas s127 Appointment Letter</u>
SEC-015	<u>E.ON UK Plc. s127 Appointment Letter</u>
SEC-016	<u>Environment Agency s127 Appointment Letter</u>
SEC-017	<u>Heron Wind s127 Appointment Letter</u>
SEC-018	<u>Location of land to be withdrawn from Proposed Order Limits - Annex B</u>
SEC-019	<u>Location of land to be withdrawn from Proposed Order Limits - Plot Number Annex</u>
SEC-020	<u>Location of land to be withdrawn from Proposed Order Limits</u>
SEC-021	<u>National Grid Electricity Transmission Plc. s127 Appointment Letter</u>
SEC-022	<u>National Grid Gas s127 Appointment Letter</u>
SEC-023	<u>National Grid Plc. s127 Appointment Letter</u>
SEC-024	<u>Network Rail Infrastructure s127 Appointment Letter</u>
SEC-025	<u>Optimus Wind s127 Appointment Letter</u>
SEC-026	<u>S.127 application regarding Anglian Water</u>
SEC-027	<u>S.127 application regarding Associated British Ports</u>
SEC-028	<u>S.127 application regarding Centrica KPS Ltd</u>
SEC-029	<u>S.127 application regarding Centrica Storage</u>
SEC-030	<u>S.127 application regarding E ON UK Gas</u>
SEC-031	<u>S.127 application regarding E ON UK Plc.</u>
SEC-032	<u>S.127 application regarding Environment Agency</u>
SEC-033	<u>S.127 application regarding Heron Wind</u>
SEC-034	<u>S.127 application regarding National Grid Electricity Transmission PLC</u>
SEC-035	<u>S.127 application regarding National Grid Gas Plc.</u>
SEC-036	<u>S.127 application regarding National Grid Property Holdings</u>
SEC-037	<u>S.127 application regarding Network Rail Infrastructure</u>
SEC-038	<u>S.127 application regarding Optimus Wind</u>
SEC-039	<u>S.127 application regarding SMart Wind</u>
SEC-040	<u>S.127 representation by Network rail</u>

DOC REF	TITLE
SEC-041	<u>S.127 Submission from Anglian Water - Annex 1</u>
SEC-042	<u>S.127 submission from Anglian Water.</u>
SEC-043	<u>S.138 application regarding British Telecom</u>
SEC-044	<u>Schedule of Correspondence - s.127 material</u>
SEC-045	<u>SMart Wind s127 Appointment Letter</u>
SEC-046	<u>Statement of Reasons - s.127 material</u>
SEC-047	<u>Anglian Water's letter withdrawing their s127 objections</u>
SEC-048	<u>C.GEN Killingholme Ltd withdrawal of application in respect of British Telecommunications for the purposes of s138</u>
SEC-049	<u>C.GEN Killingholme Ltd withdrawal of application in respect of the Environment Agency for the purposes of s127/138</u>
SEC-050	<u>C.GEN Killingholme Ltd withdrawal of application in respect of the Network Rail for the purposes of s127/138</u>
SEC-051	<u>Email from Network Rail withdrawing their s127 representations</u>
SEC-052	<u>C.GEN Killingholme Ltd withdrawal of application in respect of the Anglian Water Services Limited for the purposes of s127/138</u>
SEC-053	<u>C.GEN Killingholme Ltd withdrawal of application in respect of Associated British Ports re s127.138</u>
SEC-054	<u>S.127 Certificates relating to Centrica KPS Limited</u>
SEC-055	<u>S.127 Certificates relating to Centrica Storage Limited</u>
SEC-056	<u>S.127 Certificates relating to E.ON UK Gas Limited</u>
SEC-057	<u>S.127 Certificates relating to E.ON UK Plc.</u>
SEC-058	<u>S.127 Certificates relating to Heron Wind Limited</u>
SEC-059	<u>S.127 Certificates relating to National Grid Electricity Transmission PLC</u>
SEC-060	<u>S.127 Certificates relating to National Grid Gas PLC</u>
SEC-061	<u>S.127 Certificates relating to Optimus Wind Limited</u>
SEC-062	<u>S.127 Notice relating to Centrica KPS Limited</u>
SEC-063	<u>S.127 Notice relating to Centrica Storage Limited</u>
SEC-064	<u>S.127 Notice relating to E.ON UK Gas Limited</u>
SEC-065	<u>S.127 Notice relating to E.ON UK Plc.</u>
SEC-066	<u>S.127 Notice relating to Heron Wind Limited</u>
SEC-067	<u>S.127 Notice relating to National Grid Electricity Transmission PLC</u>
SEC-068	<u>S.127 Notice relating to National Grid Gas PLC</u>
SEC-069	<u>S.127 Notice relating to Optimus Wind Limited</u>

OTHER CONSENTS REQUIRED

The Applicant provided a schedule of consents and licenses required under other legislation as part of the application documents [APP-057].

The applicant modified that list at the close of the Examination [REP-298] by stating that it is no longer necessary for a European Protected Species Licence or the Consent of the Crown Commissioners.

In the report the ExA have considered the issue of the European Protected Species Licence and we stated our opinion that consent from the Crown Estate is still required.

- Consents required for the development authorised by the DCO
 - (i) Environmental Permit: Environment Agency
 - (ii) Connection Agreement: Network rail
 - (iii) Surface Water Discharge Consent: Environment Agency
 - (iv) Trade Effluent Discharge Consent: Anglian Water
 - (v) Water Abstraction Licence: Environment Agency
 - (vi) European Protected Species Licence: Natural England
 - (vii) Permit to emit CO₂: Environment Agency
 - (viii) Generating Licence (if sought): Dept. for Energy and Climate Change
 - (ix) Hazardous Waste Registration: Environment Agency
 - (x) Control of Major Accident Hazard Licence: Health and Safety Executive
 - (xi) Consent of Crown Commissioners: Crown Commissioners

- Consents required for the construction and operation of the Electrical Grid Connection
 - (i) Planning Permission: North Lincolnshire Council
 - (ii) Bilateral Connection Agreement: National Grid Electricity Commission

- Consents required for the construction and operation of the Gas Connection
 - (i) Planning Permission: North Lincolnshire Council
 - (ii) Gas Transportation Licence: OfGEM if C.GEN will own and operate
 - (iii) Advanced reservation of capacity agreement: National Grid Gas

- Consents required in relation to the construction and operation of carbon transport and storage infrastructure
 - (i) Development Consent Order / Planning Permission for the on shore section of CO2 transport pipeline: Planning Inspectorate and Secretary of State / North Lincolnshire Council
 - (ii) Health and Safety Notification: Health and Safety Executive
 - (iii) Onshore to Offshore Connection Consent: Department of Energy and Climate Change
 - (iv) Offshore Works Construction Authorisation: Marine Management Organisation
 - (v) Pipeline Works Authorisation: Department of Energy and Climate Change
 - (vi) Offshore Chemicals Permit: Department of Energy and Climate Change
 - (vii) Lease for Storage of CO2: Crown Estates
 - (viii) CO2 Storage Licence / Permit: Department of Energy and Climate Change

EVENTS IN THE EXAMINATION

Application

The application, dated 25 March 2013, was made under s.37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 25 March 2013.

The application was accepted for Examination on 19 April 2013 [DEC-001].

Examining Authority

On the 28 June 2013 a single Examining Inspector was appointed to conduct the Examination of this application.

On 6 August 2013 [DEC-004] an Examining Authority (ExA) was appointed to conduct the examination under s62 and s65 of the Planning Act 2008 as amended

Rule 4 and Rule 6 Letter

The ExA issued a letter under Rules 4 and 6 of the Infrastructure Planning (Examination Procedure Rules 2010 (as amended) on 6 August 2013 [DEC-004].

Preliminary Meeting

The ExA held the Preliminary Meeting on 11 September 2013

Period of Examination

The Examination started on 12 September 2013 and ended on 11 March 2014

Rule 8 Letter

The ExA issued a letter under Rule 8 of the Infrastructure Planning (Examination Procedure Rules 2010 (as amended) on 20 September 2013 [DEC-005].

Examining Authority's Written Questions

The ExA issued our first round of written questions on 20 September 2013 [DEC-005] with a deadline for responses of 14 October 2013

The ExA issued our second round of written questions on 13 December 2013 [DEC-010] with a deadline for responses of 7 January 2014

The ExA issued our third round of written questions on 25 February 2104 [DEC-015] with a deadline for responses of 5 March 2014

Procedural Decisions

The ExA issued procedural decisions under Rules 8, 9 and/or 17 of the Infrastructure Planning (Examination Procedure Rules 2010 (as amended)) on:

20 September 2013 [DEC-005]
4 October 2013 [DEC-006]
22 October 2013 [DEC-007]
18 November 2013 [DEC-008]
3 December 2013 [DEC-009]
13 December 2013 [DEC-010]
31 January 2014 [DEC-011]
7 February 2014 [DEC-012]
18 February 2014 [DEC-013]
21 February 2014 [DEC-014]
25 February 2014 [DEC-015]
3 March 2014 [DEC-016]
7 March 29014 [DEC-017]
10 March 2014 [DEC-018]

Hearings

The ExA held the following Hearings:

ISH on the draft DCO	20 November 2013
Open Floor Hearing	20 November 2013
Compulsory Acquisition Hearing	21 and 22 November 2013
ISH on Transport and Traffic	26 November 2013
ISH on Habitats, Ecology and Nature Conservation	27 November 2013
ISH on other Environmental Matters	28 November 2013

ISF on the Historic and Archaeological Environment	29 November 2013
ISH on Design, Layout and Visibility	29 November 2013
ISH on the draft DCO	4 February 2014
ISH on Habitats, Ecology and Nature Conservation	5 February 2014
ISH on Transport and Traffic	6 February 2014
Compulsory Acquisition Hearing	11, 12 and 13 February 2014
S.127 Hearing	12 February 2014

Accompanied Site Visit

The ExA held and accompanied site visit on 19 November 2013.

LIST OF ABBREVIATIONS

AA	Appropriate Assessment
Able	Able Humber Ports
ABP	Associated British Ports
AGI	Above Ground Installation
ALP	Able Logistics Park
AMEP	Able Marine Energy Park
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
AQS	Air Quality Standards Regulations 2010
AWS	Anglian Water Services
CA	Compulsory Acquisition
CABE	Commission for Architecture and the Built Environment
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Readiness
CCS	Carbon Capture and Storage
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
COMAH	Control of Major Accident Hazards
CPK	C.RO Ports Killingholme Limited
DAS	Design and Access Statement
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DECC	Department for Energy and Climate Change

DML	Deemed Marine Licence
EA	Environment Agency
EIA	Environmental Impact Assessment
EPS	European Protected Species
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FRA	Flood Risk Assessment
ha	hectares
HA	Highways Agency
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
HSC	Hazardous Substances Consent
HSE	Health and Safety Executive
IGCC	Integrated Gasification Combined Cycle
IPC	Infrastructure Planning Commission
ISH	Issue Specific Hearing
km	kilometres
LCPD	Large Combustion Plant Directive
LIR	Local Impact Report
LSE	likely significant effect
m	metres
MMO	Marine Management Organisation
MPS	UK Marine Policy Statement
MWe	Megawatt equivalent

NE	Natural England
NELC	North East Lincolnshire Council
NERC	Natural Environment and Rural Communities Act
NKHP	North Killingholme Haven Pits
NLC	North Lincolnshire Council
NLLCAG	North Lincolnshire Landscape Character Assessment and Guidelines
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NTS	National Transmission System
PADHI	planning advice for developments near hazardous installations
PEIR	Preliminary Environmental Impact Report
PM	Preliminary Meeting
PPA	principal project area
PROW	Public Rights of Way
PWWC	Passive Wedge Wire Cylinder
RBMP	River Basin Management Plan
REC	Reality Energy Centre
RIES	Report on the Implications for European Sites
RSS	Regional Spatial Strategy
SoCG	Statement of Common Ground
SAC	Special Area of Conservation
SFRA	Strategic Flood Risk Assessment
SPA	Special Protection Area

SSSI	Site of Special Scientific Interest
WCA	Wildlife and countryside Act 1981
WFD	Water Framework Directive

**RECOMMENDED DEVELOPMENT CONSENT ORDER AND
DEEMED MARINE LICENCE**

201[*] No. [***]**

INFRASTRUCTURE PLANNING

The North Killingholme (Generating Station) Order 201[*]**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

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The undertaker has applied to the Secretary of State for an order granting development consent in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

The application was examined by an examining authority appointed by the Secretary of State under Part 4 of the Planning Act 2008 (the “Act”)(a);

The examining authority has considered the national planning statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the Act;

(a) 2008 c.29.

The Secretary of State as decision-maker has decided to grant development consent and, under section 114 of the Act, to make the following Order:

Citation and commencement

1. This Order may be cited as The North Killingholme (Generating Station) Order 201[] and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

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

“the 1962 Act” means the Pipelines Act 1962;

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

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

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

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

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

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

“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” has the same meaning as in the 1980 Act;

“commence” means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting

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- (a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 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 was 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 sections 67 and 80 of, and Part 2 of Schedule 10 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (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 9 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.
- (c) 1980 c.66. Section 1(1) was 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 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the 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); section 36(A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (f) 2008 c.29.

of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

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

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

“environmental statement” means the environmental statement submitted with the application for the Order;

“footpath diversion zone” means the area or areas of land marked as such on the land plans;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

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

“limits of deviation” means the limits of deviation for the scheduled works comprised in the authorised development shown on the works plans;

“maintain” includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct any part (but not the whole), decommission, replacement of any part (but not the whole) and improve, but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environmental statement, and “maintenance” shall be construed accordingly;

“Order land” means the land shown on the land plans within the Order limits which is land over which it is proposed to exercise powers of compulsory acquisition or any right to use land and land subject to powers to extinguish, suspend or interfere with easements, servitudes and/or other private rights described in the book of reference;

“Order limits” means the land shown on the land and works plans within which the authorised development may be carried out and/or land acquired or used;

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

“planning drawings” means the drawings numbered 2.15 to 2.28 set out in requirement 4 in Part 3 of Schedule 1 (requirements) ;

“relevant planning authority” means the planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Part 3 of Schedule 1 to this Order;

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

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

“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 1 of Part 3 of the 1991 Act;

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

“undertaker” means C.GEN Killingholme Limited, which is the named undertaker, or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

(a) 1981 c.67. Section 7 was amended by section 70 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.

“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 plans” means the plans certified as the works plans 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.

(4) The expression “includes” shall be construed without limitation.

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) For the purposes of the authorised development, development consent granted by this Order shall include and permit the alteration, removal, clearance, refurbishment, reconstruction, decommissioning and demolition of any buildings or other structures within the Order limits to the extent that they relate to are required by or are incidental to the carrying out of the authorised development.

(3) The development authorised by this Order shall be constructed in the lines or situations shown on the works plans and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

(4) The numbered works comprised in the authorised development shall be constructed within the limits of deviation.

(5) In constructing the scheduled works, the undertaker may—

- (a) Deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and
- (b) deviate vertically to any extent downwards and (except in the case of maintaining) no more than 5 metres upwards from the heights specified in Part 2 of Schedule 1 for each building comprised in the authorised development and shown on the planning drawings as may be necessary, convenient or expedient.

(6) The main stack comprised in Work No. 1 and shown on the planning drawings shall not be constructed so as to be lower than 85 metres above ordnance datum and the flare stack comprised in Work No. 2b shall not be constructed so as to be lower than 140 metres above ordnance datum.

(7) The pipe conveyor comprised in Work No. 6b shall not be constructed above 21 metres above ordnance datum except in the locations shown on drawing 2.28 Conveyor Section in the planning drawings.

Non-material changes

4.—(1) The provisions of section 96A of the 1990 Act shall apply to development consent granted by this Order insofar as it relates to matters ordinarily governed by planning permission under the 1990 Act as if it were a planning permission granted under the 1990 Act.

(2) In construing section 96A of the 1990 Act for the purposes of giving effect to this article, references to “planning permission” shall be construed as references to “development consent”, references to “conditions” shall be construed as references to requirements attached to this Order and references to the land to which the planning permission relates shall be references to land owned or occupied by the undertaker.

(3) This article shall apply only to articles 3, 5, 6, 31, 32 and Part 3 to Schedule 1 of the Order.

Maintenance decommissioning and demolition of authorised development

5.—(1) Subject to the other terms of this Order, including the requirements, the undertaker may at any time maintain the authorised development, except to the extent that an agreement made under this Order provides otherwise.

(2) Subject to paragraph (3) and the requirements the power to maintain the authorised development includes the power to carry out and maintain any of the following as may be necessary or expedient for the purposes of or for purposes ancillary to the construction or operation of the authorised development namely—

- (a) works to alter the position of apparatus below ground level including main sewers drains and cables including below ground structures associated with that apparatus within the Order limits; and
- (b) works of decommissioning and demolition.

(3) This article only authorises the carrying out of maintenance demolition and decommissioning of works within the Order limits.

Operation of generating station

6.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(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 to authorise the operation of a generating station.

(3) Subject to the provisions of requirement 36 the generating station may be fired by natural gas or by solid fuels treated in the gasification facility comprised in Work No. 2.

Benefit of the Order

7.—(1) Subject to paragraph (2) the provisions of articles 10 to 12, 14 to 27 and 31 shall have effect only for the named undertaker and a person who is a transferee or lessee as defined in this article.

(2) The named undertaker may, with the consent of the Secretary of State—

- (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.

(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.

Guarantees in respect of payment of compensation

8. The authorised development must not be commenced and the undertaker must not begin to exercise the powers of articles 10 to 28 inclusive, 31 and 32 of this Order unless either a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order or an alternative form of security for that purpose is in place which has been approved by the relevant planning authority.

Defence to proceedings in respect of statutory nuisance

9.—(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 Paragraphs (c), (d), (e), (fb), (g), (ga) and (h) of section 79(1) of that Act 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
 - (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 19(1); 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

10.—(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).

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

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(4) The provisions of this article shall not apply to the streets in parcel numbers 09/09, 09/10, 09/11, 10/14, 10/15, and 10/16 as shown on land and works plans to the extent that any works interfere with the surface of the street in question or impede passage along the street but nothing in this article shall prevent the carrying out of works in the subsoil of a street to which this paragraph applies.

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

Temporary stopping up of streets

11.—(1) Subject to sub-paragraph (5) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) within the extent of the footpath diversion zones for each such street shown on the land plans.

(4) The provisions of this article shall apply to any street that is created in or diverted through any parcels shown on the land plans and any such street may be temporarily stopped up, altered or diverted within the footpath diversion zone for such a street shown on the land plans.

(5) The undertaker shall not temporarily stop up, alter or divert—

- (a) the street specified as mentioned in paragraphs (3) and (4) without first consulting the local highway authority; and
- (b) any other street without the consent of the local highway authority which may attach reasonable conditions to any consent.

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

Access to works

12. The undertaker may, for the purposes of carrying out the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 4 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authority

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

- (a) any stopping up, alterations 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 10(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

14.—(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 subject to the obtaining of consent or approval as the case may be pursuant to paragraphs (3) and (4).

(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).

(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) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(b) (requirement for an environmental permit).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

Authority to survey and investigate the land

15.—(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;

(a) 1991 c.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 No. 675. Regulation 12 replaced section 85 of the Water Resources Act 1991 c.56 which was repealed by Schedule 28 paragraph 1 of the Environmental Permitting (England and Wales) Regulations S.I. 2010 No. 675

- (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—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(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, Part 1 (determination of questions disputed compensation) of the 1961 Act.

Compulsory acquisition of land

16.—(1) Subject to paragraph (5) the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, 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.

(4) This article is subject to article 25 (temporary use of land for carrying out the authorised development).

(5) Articles 16 to 27 of this Order shall not apply to any—

- (a) land owned for the time being by the Simon Group Limited (company number 00052665) or its subsidiaries, including C.RO Ports Killingholme Limited, or to any mortgagee of such land in respect of an interest owned by the Simon Group Limited or any of its subsidiaries; and
- (b) land or interest in land owned by Associated British Ports (company number ZC000195).

Power to override easements and other rights

17.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 7 of this Order, by any person deriving title under them or by any of their servants

or agents) is authorised by this Order for the purposes of this article if it is authorised by the Order apart from this article and done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance or anything in, on, over or under land; or
- (c) the use of any land.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support (and include restrictions as to the user of land arising by the virtue of a contract having that effect).

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest or right shall be extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences but only to the extent required for or necessary or incidental to the authorised development

(5) In respect of any interference, breach, extinguishment, abrogation or discharge in pursuance of this article, compensation—

- (a) shall be payable under section 63 or 68 of the Lands Clauses Consolidation Act 1845 or under section 7 or 10 of the Compulsory Purchase Act 1965; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under those Acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those Acts.

(6) Nothing in this article shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) This article shall not apply in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act, or section 278 of the 1980 Act.

Private rights of way

18.—(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),

whichever is the earlier, but only to the extent required for or necessary or incidental to the authorised development.

(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) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(6) 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.

(7) If any such agreement as is referred to in paragraph (6)(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.

Time limit for exercise of authority to acquire land compulsorily

19.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into effect—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declarations shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 21 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 25 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

20.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the Book of Reference and shown on the land plans except for interests held by the Crown..

(2) As from the date on which a compulsory acquisition notice is served or the date on which a 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

(a) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

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 23 (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.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

21.—(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 of 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, the subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(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.

(a) 1981 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.

Acquisition of subsoil only

22.—(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 16 (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 23 (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

23.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as 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

24.—(1) The undertaker may enter upon 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.

Temporary use of land for carrying out the authorised development

25.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;

- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary or permanent works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 5 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 20 of this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 20 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 22 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage rising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

27. The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans within Order limits and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference;
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference; and
- (d) Powers under this article cannot be exercised in relation to land and rights held by Centrica KPS Ltd. in respect of plots 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05, Centrica Storage Plc. in respect of plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03, Heron Wind Ltd. in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05, National Grid Gas in respect of plots 04/10, 05/01, 05/03, 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 07/08, 07/09, 07/11, 08/01, 08/02, 08/03, 09/02, and 09/05, National Grid Electricity Transmission in respect of plots 09/02, 09/04 and 09/05 or Optimus Wind Ltd in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05.

Railway undertakings

28.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (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 undertakers; or
- (b) forms part of a level crossing belonging to any such undertakers or to any other person,

except with the consent of the undertakers 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 or delayed.

Application of landlord and tenant law

29.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants 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

30. 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).

Felling or lopping of trees

31.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or the Order land, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Protective work to buildings

32.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purposes of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 35 (arbitration).

(7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development;

the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) Underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) Any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Procedure in relation to certain approvals etc.

33.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain (“discharging authority”) for any agreement or approval required or contemplated by any of the provisions of the Order such agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld.

(2) Schedule 7 shall have effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements.

Certification of plans, etc.

34.—(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 (dated XXX);
- (b) the land plans (Document Reference Nos 2.1 to 2.14, dated 20 March 2014);
- (c) the works plans (Document Reference Nos 2.15, Rev B to 2.27 Rev B, dated February 2014; and 2.28 dated 19 March 2013);
- (d) the Design and Access Statement (dated 22 March 2013);
- (e) the Architectural Study (dated January 2014);
- (f) the outline Construction Environmental Management Plan (dated 22 March 2013, Appendix 3.2 of the environmental statement); and
- (g) the environmental statement (dated 22 March 2013).

for certification that they are true copies of the plans or 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

35. Any difference under provision of this Order, unless otherwise provided for, 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 decision-maker.

Deemed Marine Licence

36. The undertaker is deemed to be granted a licence under section 66 of the Marine and Coastal Access Act 2009(a) to carry out the works described in Schedule 6, subject to the provisions set out in Schedule 6, which shall be treated as licence conditions.

Protection of Interests

37. Schedule 8 to this Order has effect.

(a) 2009 c. 23, as amended at the date of the coming into force of this Order.

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

Address	<i>Name</i>
Date	Head of Unit Department for Energy and Climate Change

SCHEDULES

SCHEDULE 1

Authorised Development

PART 1

Authorised Development

In North Lincolnshire

A Nationally Significant Infrastructure Project comprising a generating station as defined in sections 14(1)(a) and 15 of the 2008 Act comprising:

Work No. 1 A combined cycle plant with a nominal gross electrical output of up to 470 MWe fuelled by gas and including—

- (a) one gas turbine within a turbine hall;
- (b) one steam turbine within a turbine hall;
- (c) one or two electricity generators and one or two transformers within a compound;
- (d) a heat recovery steam generator;
- (e) a main stack;
- (f) two banks of hybrid cooling towers, condenser equipment and auxiliary cooling equipment;
- (g) raw and fire water storage tanks;
- (h) a raw water treatment plan;
- (i) a demineralised water treatment facility;
- (j) gas insulated switchgear;
- (k) an administration building;
- (l) a workshop and warehouse building;
- (m) a materials storage facility;
- (n) a waste water treatment plant; and
- (o) a facility to enable steam-water pass-outs and/or hot-water pass-outs.

Work No. 2a A gasification facility to enable the processing of solid fuels to produce syngas to supply to the gas turbine comprised in Work No. 1 including—

- (a) a gasifier;
- (b) a syngas treatment/conditioning facility;
- (c) acid gas removal equipment;
- (d) sulphur recovery and tailgas treatment equipment;
- (e) an electrical switching station;

- (f) an air separation unit;
- (g) nitrogen storage tanks;
- (h) oxygen storage tanks;
- (i) fuel milling/drying/preparation and supply equipment;
- (j) solid waste removal equipment and storage facilities;
- (k) a filter cake storage area; and
- (l) a biomass and/or limestone storage area;

Work No. 2b A Flare stack with flares integral to the operation of Work No. 2a;

Work No. 2c A work comprising equipment to connect Work No. 2a and Work No. 2b;

Work No. 3a A work comprising a piled platform and equipment for the intake of cooling water required for the operation of Work No. 1;

Work No. 3b A work comprising pipes and associated infrastructure between Work No. 1 and Work No. 3a to transport cooling water to or from Work No. 1;

Work No. 3c A work comprising pipes for the discharge of used cooling water from Work No. 1 transported by Work No. 3b;

Work No. 4 An access road running in a northerly direction from a junction with Haven Road to the southernmost point of Work No. 2a;

Work No. 5 a railway siding running from a connection to the existing Killingholme Branch Line and then running in a south-westerly direction before running anti-clockwise to termination at a location on the south western boundary of Work No. 1 and a facility for the unloading of trains delivering solid fuel;

Work No. 6a facilities to enable the unloading of solid fuel from vessels moored at the existing wharf for transport to Work No. 7 by means of Work No. 6b;

Work No. 6b a pipe conveyor to transport solid fuel from Work No. 6a to Work No. 7;

Work No. 7 a storage hall for the storage of solid fuel;

Work No. 8 a new access road commencing at a junction with Haven Road and running in an easterly direction to the southern most point of Work No. 1;

and in connection with such works and to the extent that they do not otherwise form part of any such work, associated development whether or not shown on the plans referred to in the requirements including—

- (a) the removal and/or modification of the northern drainage pond;
- (b) habitat creation;
- (c) water supply works, foul drainage provision, surface water management systems, and culverting;
- (d) pipes for steam pass outs and/or hot water pass outs within the Order limits;
- (e) internal site roads and vehicle parking facilities;
- (f) bunds, embankments, swales, landscaping and boundary treatments and fencing;
- (g) the demolition of buildings and structures within the Order limits;
- (h) the provision of footways; and
- (i) lighting columns and lighting.

PART 2

Building Heights

<i>(1)</i> <i>Building</i>	<i>(2)</i> <i>Height (metres) above ordnance datum</i>
heat recovery steam generator	40
turbine hall	35
main stack	85
hybrid cooling tower (bank 1)	25
hybrid cooling tower (bank 2)	25
administration building	17
warehouse	25
water treatment plant	13
break tank	22
gas insulated switchgear building	17
covered fuel storage	40
biomass storage silos	50
limestone storage silos	50
gasifier, including fuel preparation facility	70
air separation unit	50
oxygen storage tank	25
nitrogen storage tank	25
acid gas removal	65
wastewater treatment plant	25
electrical switching station 1	25
electrical switching station 2	15
electrical switching station 3	15
flare stack	140

PART 3

Requirements

Interpretation

In this Part of this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2008 Act” means the Planning Act 2008;

“capture equipment” means the plant and equipment required to capture the target carbon dioxide and either—

(a) identified as such in the current CCS proposal; or

(b) installed on the designated site;

“CCS” means carbon capture and storage;

“CCS proposal” means a proposal for the capture, compression (should that be necessary) transport and storage of the target carbon dioxide, which identifies the proposed capture technology, compressor siting, transport route and storage location for the authorised development;

“current CCS proposal” means:—

- (a) the CCS proposal including Work No. 2a and the other elements set out in the feasibility study and which has been assessed as technically feasible by the Secretary of State; or
- (b) where a revised CCS proposal has been identified under Requirement 35(5), the proposal which has been most recently so identified;

“CEMP” means the construction environmental management plan to be submitted and approved pursuant to Requirement 14 below;

“design and access statement” means the document with that title submitted with the application for the Order;

“designated site” means the land shown coloured buff on the works plans as the area where the undertaker proposes to locate capture equipment whether or not including Work No. 2;

“feasibility study” means the document entitled C.GEN Killingholme Generating Station CCR Feasibility Study and dated 22 March 2013;

“operations area” means that part of the authorised development comprising parcel numbers 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03 shown on the land plans and described in the book of reference;

“target carbon dioxide” means as much of the carbon dioxide emitted by the first 300MWe of the capacity of the authorised development when it is operating at full capacity as it is reasonably practicable to capture for the purposes of permanent storage, having regard to the state of the art in carbon capture and storage technology for the time being;

“the highway authority” has the same meaning as in the 1980 Act;

“the relevant planning authority” means North Lincolnshire Council.

Time limits etc.

1. The authorised development shall commence no later than the expiration of seven years beginning with the date that this Order comes into force.

2.—(1) No part of the authorised development shall be carried out until a masterplan for the authorised development has been submitted to and approved by the relevant planning authority.

(2) The masterplan shall include:

- (a) a plan illustrating either—
 - (i) the entire authorised development where it is proposed to be constructed in a single phase; or
 - (ii) those elements of the authorised development which are to be developed subject to the relevant masterplan (“first phase”) and any elements or areas of the authorised development which are intended to be constructed at a later date (“subsequent phase”);
- (b) an outline programme setting out the then anticipated programme for construction of the authorised development proposed at that time and comprised in the relevant masterplan;
- (c) a scheme identifying how the elements of the authorised development to be constructed will be governed by the following:
 - (i) the CEMP;
 - (ii) the Construction Worker Travel Plan and Operational Worker Travel Plan;
 - (iii) a Construction Traffic Management Plan addressing construction traffic, HGV movements and abnormal loads; and
 - (iv) an Operational Transport Management Plan; and
- (d) where any subsequent phase of the authorised development will remain to be constructed following completion of construction of the elements of the authorised development specifically identified in the submitted plan under paragraph (2)(a) above as a first phase:
 - (i) A phased landscaping masterplan; and

(ii) A landscaping management plan to control the use and maintenance of undeveloped land together with a scheme of monitoring.

(3) Where elements of the authorised development will be constructed in more than one phase as shown on a plan produced under paragraph (2)(a) above, either:

(i) A single masterplan may address the entirety of the authorised development; or

(ii) A masterplan must be produced for each subsequent phase of the authorised development prior to commencement of the subsequent phase, which demonstrates accordance with the principles previously established in the preceding phase.

(4) Where a masterplan has been submitted to and approved by the relevant planning authority the details to be submitted to the relevant planning authority to discharge any requirement may relate to a particular phase only in order that the construction and/or operation of that phase may commence in accordance with the approved details. Where a masterplan has not been submitted in relation to any particular construction phase then construction of that phase shall not commence until a masterplan has been submitted and approved by the relevant planning authority and the relevant part of any requirement has been discharged in relation to that phase.

(5) Construction shall be carried out in accordance with any approved masterplan.

Detailed design

3.—(1) No works within the relevant phase of the authorised development may commence until details of the following, which must accord with the principles of the Architectural Study dated January 2014 and the design and access statement (with the former taking precedence in the case of conflict), have been submitted and approved by the relevant planning authority—

(a) details of the siting, design, external appearance and dimensions of Work Nos. 1, 2a, 2b, 3b, 3c, 4, 6a, 6b and 7 comprised in the authorised development;

(b) details of the colour, materials, and surface finishes of Work Nos 1, 2a, 2b, 4, and 7 comprised in the authorised development;

(c) details of Work No. 4 and any other vehicular circulation roads, parking, and hard standings comprised in the authorised development; and

(d) details of finished ground levels and heights of all permanent buildings and structures comprised in the authorised development which in respect of critical infrastructure, shall not be below 5.2 metres AOD.

(2) The development shall hereafter be carried out and maintained in accordance with the approved details.

4.—(1) The authorised development shall be carried out in accordance with the principles contained in the Architectural Study dated January 2014 and the design and access statement (with the former taking precedence in the case of conflict) and in general accordance with the building envelopes shown on the elevations contained in the approved plans listed below (subject always to Article 3(5) and (6), Part 2 of Schedule 1 and paragraph 4(2) Part 3 of Schedule 1 to this Order):

2.15 Indicative Elevation Drawings - Administration Building (rev B);

2.16 Indicative Elevation Drawings - Acid Gas Removal (rev B);

2.17 Indicative Elevation Drawings - Biomass/Limestone Store (rev B);

2.18 Indicative Elevation Drawings - Flare Stack (rev B);

2.19 Indicative Elevation Drawings - Covered Fuel Storage (rev B);

2.20 Indicative Elevation Drawings - Gasification Island (rev B);

2.21 Indicative Elevation Drawings - Hybrid Cooling Towers (rev B);

2.22 Indicative Elevation Drawings - Main E.S.S. (rev B);

2.23 Indicative Elevation Drawings - Power Island (rev B);

- 2.24 Indicative Elevation Drawings - Raw Water Treatment Plant (rev B);
- 2.25 Indicative Elevation Drawings - Sulphur Recovery and Tail Gas Treatment (rev B);
- 2.26 Indicative Elevation Drawings - Warehouse and Storage (rev B);
- 2.27 Indicative Elevation Drawings - Waste Water Treatment (rev B); and
- 2.28 Conveyor Section.

(2) This requirement is subject to the approvals required under requirement 3 above.

Site Road

5. The site access road comprised in Work No. 4 must be completed prior to commencement of construction of Works Nos. 1, 2a, 2b, 2c, 3a, 3b, 5, 6, and 7.

Provision of landscaping

6.—(1) No part of the authorised development shall commence until a detailed landscaping scheme, associated working programme and long term management plan for the operations area has been submitted to and approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

(2) The landscaping scheme shall include details of:

- (a) the location, number, species, size and planting density of proposed planting, including details of:—
 - (i) structure planting to be undertaken on the perimeter of the site;
 - (ii) screen planting to reduce views of ground level operational activities;
 - (iii) enhancement planting alongside ditches and water bodies; and
 - (iv) amenity planting at site entrances;
- (b) how the landscaping works comply with the objectives set out in the South Humber Bank Landscape Strategy contained in SPG5 Landscape Character Assessment and Guidelines;
- (c) the specific standard to which the works will be undertaken which shall include a requirement that fill be placed to a depth of not less than 600 mm in areas specified in the scheme; and
- (d) a timetable for the implementation of all hard and soft landscaping works.

(3) All planting undertaken pursuant to the landscaping scheme shall comprise:

- (a) native species that would also enhance biodiversity and connect habitats; and
- (b) stock of local origin, where available.

(4) The authorised development shall not commence until the screen planting referred to at Requirement 6(2)(a)(ii) above has been undertaken.

Implementation and maintenance of landscaping

7.—(1) All landscaping works shall be carried out in accordance with the detailed written landscaping scheme approved under Requirement 6 and to the specified standard.

(2) Any tree or shrub planted as part of the approved detailed landscaping scheme above that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, shall be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

(3) If any boundary shrub or vegetation is the subject of localised clearance for the purpose of construction of the authorised development, replacement planting will be undertaken to replace the extent of vegetation lost using locally occurring species to

retain the existing vegetation pattern, unless otherwise approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

Highway works

8.—(1) No part of the authorised development shall be carried out until details of the siting, design and layout of the highway works comprised in Work Nos. 4 and 8 have after consultation with the relevant planning authority and highway authority been submitted to and approved by the relevant planning authority.

(2) The approved Works shall be carried out in accordance with the approved details.

Fencing and other means of site perimeter enclosure

9.—(1) No part of the authorised development shall be carried out until written details of all proposed permanent or temporary fences, hoardings, walls or other means of enclosure of the operations area has been submitted to and approved by the relevant planning authority.

(2) All construction sites shall remain securely fenced at all times during construction of the authorised development in accordance with the approved scheme.

(3) All temporary fencing shall be removed on completion of construction of the authorised development.

Construction surface water drainage

10.—(1) No part of the authorised development shall be carried out until a written scheme to deal with the disposal of surface and foul water drainage (the “Construction Drainage Scheme”) during construction has been submitted to and approved by the relevant planning authority (in consultation with the Environment Agency and North East Lindsey Drainage Board).

(2) The Construction Drainage Scheme shall provide for—

- (a) the treatment of contaminated surface water and installation of oil and grit interceptors through which surface water must pass;
- (b) measures for the control and treatment of leachate to prevent it from entering any watercourse, underground strata or adjoining land;
- (c) the continued operation of existing drainage systems during construction of the authorised development;
- (d) measures to ensure that no water runs off from stock piles into drainage ditches or watercourses;
- (e) the disposal of water used during dewatering activities;
- (f) use of temporary drainage routes and pumping equipment; and
- (g) a monitoring system for the purposes of monitoring the approved measures.

(3) Unless otherwise agreed by the relevant planning authority, the scheme shall be implemented in accordance with the approved details and an approved programme.

Operational surface and foul water drainage

11.—(1) No part of the authorised development shall commence until a written scheme to deal with the details of the surface water drainage system, the oily water drainage system, the waste water treatment plant system and the sewage system (together the “operational drainage scheme”) has been submitted to and approved by the relevant planning authority.

(2) The operational drainage scheme shall provide for —

- (a) the specification for the waste water treatment plant comprised in the authorised development;

- (b) surface water that has the potential for oil contamination to be passed through oil interceptors/filters prior to discharge;
- (c) a method of disposal of waste water during washing of the compressors and HRSG tubes;
- (d) the optimisation of the use of biocides to ensure the least amount of such substances is required for the authorised development;
- (e) a rain water harvesting system to be included in the authorised development;
- (f) the discharge of all aqueous effluents via the drainage system comprised in the authorised development;
- (g) the treatment of all pre-treated effluents from the gasification island by the waste water treatment plant comprised in the authorised development;
- (h) for a system to collect run-off from stock piles prior to discharge to the surface water drainage system; and
- (i) a monitoring system for the purpose of monitoring the approved measures.

(3) Unless otherwise agreed by the relevant planning authority, the scheme shall be implemented in accordance with the approved details prior to operation of the authorised development.

Contamination and groundwater

12.—(1) No part of the authorised development shall be carried out until details of a comprehensive contaminated land investigation has been submitted to and approved by the relevant planning authority and until the scope of works approved therein have been implemented. The assessment shall include all of the following measures unless the relevant planning authority dispenses with any such requirements in writing:

- (a) A site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle and takes into account the sites existing status and proposed new use. Two full copies of the site investigation and findings shall be forwarded to the relevant planning authority.

(2) Where the risk assessment identifies any unacceptable risk or risks, a detailed remediation strategy to deal with land contamination and/or pollution of controlled waters affecting the site shall be submitted to and approved by the relevant planning authority. No works, other than investigative works, shall be carried out on the site prior to receipt of written approval of the remediation strategy by the relevant planning authority.

(3) Remediation of the site shall be carried out in accordance with the approved remediation strategy. No deviation shall be made from this scheme without the express written agreement of the relevant planning authority.

(4) No occupation of any part of the authorised development shall take place until two copies of a verification report (“Verification Report”) demonstrating completion of works set out in the approved written scheme and the effectiveness of the remediation shall be submitted to and approved by the relevant planning authority. The Verification Report shall include results of sampling and monitoring carried out in accordance with the written scheme to demonstrate that the site remediation criteria have been met. It shall also include a plan (a “Long-term Monitoring and Maintenance Plan”) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the Verification Report. The Long-term Monitoring and Maintenance Plan shall be implemented as approved.

(5) If during development, contamination not previously considered is identified then the relevant planning authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing with the relevant planning authority.

Archaeology

13.—(1) No part of the authorised development shall be carried out until a detailed and appropriate mitigation strategy to ensure that all archaeological assets encountered before and during construction in the south western area of the Operations Area are adequately recorded including a strategy for further exploratory trenching if the relevant planning authority considers it necessary and for further remains discovered during the development of the Project has been submitted to and approved by the relevant planning authority.

(2) The site investigation and post investigation assessment set out in the detailed mitigation strategy shall be completed in accordance with the details approved and the results of those assessments shall be provided to the relevant planning authority for analysis, publication and archive deposition.

(3) Any analysis, reporting, publication or archiving required as part of the mitigation strategy in the written scheme for archaeological investigation shall be deposited with the North Lincolnshire Historic Environment Record, within a reasonable period to be agreed with the relevant planning authority.

CEMP

14.—(1) No part of the authorised development shall be carried out until a CEMP, substantially in accordance with the outline CEMP (dated February 2014) has been submitted to and approved by the relevant planning authority.

(2) All construction work shall be carried out in accordance with the approved CEMP unless otherwise approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

Storage of liquids on site

15.—(1) No part of the authorised development shall be brought into use until a written scheme to deal with handling and onsite storage of process chemicals, cleaning substances, fuels, and oils and lubricants on site has been submitted to and approved by the relevant planning authority.

(2) The scheme shall provide for:—

- (a) the storage of any process chemicals, fuels (not being natural gas for combustion in Work No. 1 or syngas or solid fuels for combustion in Work No. 2a), oils or lubricants within an impermeable bund with a minimum capacity of 110% of the capacity of the relevant container or where the bund is for multiple containers a capacity of 110% of the largest container or 25% of all container capacities and the location of all taps, filler pipes, pumping equipment, vents and sight glasses will be located within the bund;
- (b) procedures for handling and storage of process chemicals, cleaning substances, fuels (not being natural gas for combustion in Work No. 1 or syngas or solid fuels for combustion in Work No. 2), oils and liquids;
- (c) details of the alarms to be installed to any sumps that will be used in connection with storage areas to alert in the case of any overflow of the storage areas; and
- (d) the protocol to be followed in the event of a spillage of liquids to which this requirement applies.

(3) Liquids shall be stored in accordance with the approved scheme.

Control of noise during construction

16. During construction the noise level as a result of the construction of the authorised development at any residential location shall not exceed 51dB LAeq, 1 hour unless otherwise agreed in writing by the relevant planning authority and be within the constraints of the environmental information assessed and subjected to examination.

17. No part of the authorised development shall be carried out until a written scheme providing for the monitoring of noise generated during the construction of the authorised development has been submitted to and approved by the relevant planning authority. The scheme shall specify the locations at which noise will be monitored, the method of noise measurement (which shall accord with BS 5228 or, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances) and the frequency of submission of data to the relevant planning authority.

18.—(1) Prior to commencement of construction Work No. 1 or Work No. 2a or Work No. 2b an acoustic design report must be submitted in relation to the construction of the relevant work and approved by the relevant planning authority.

(2) The report must detail—

- (a) the noise control measures that are proposed to be included in the design of the relevant Work;
- (b) the noise attenuation measures for the turbine and filter ventilation apertures and outlet ducts between the gas turbine and HRSG;
- (c) acoustic attenuation measures for internal plant and equipment;
- (d) the control measures for noise of an impulsive or tonal nature;
- (e) the enclosure of unit transformers and generator transformers; and

(3) The measures must be installed in accordance with the approved scheme prior to commencement of operation of the relevant Work and retained and maintained afterwards in accordance with the manufacturers' specifications unless the relevant planning authority gives its written consent to any variation.

Control of noise during operation

19.—(1) Operating of the authorised development shall not be commenced until a scheme has been submitted to the relevant planning authority and approved with the objective that the rating level, as defined in BS4142:1997, of noise emitted from the authorised development following commissioning shall not exceed the noise levels listed in the following table except in the case of an emergency, or otherwise agreed in writing by the local planning authority and be within the constraints of the environmental information assessed and subjected to examination.

<i>Location</i>	<i>Daytime (07:00-23:00) dB_{Leq}</i> <i>1 hour</i>	<i>Night-time (23:00-07:00)</i> <i>dB_{Leq} 5 minutes</i>
Any existing residential location	35	35

(2) Compliance with the above limits will be deemed to be achieved through compliance with the limits set out in the table which follows paragraph 1.2.1 of document the North Killingholme Power Project: Outline Operational Noise Compliance Methodology (January 2014) and a programme of Attended Noise Monitoring and periodic site noise audits and equipment condition reviews.

(3) The monitoring of noise pursuant to this requirement shall be compliant with the requirements of ISO 1996 Part 2 (2007).

(4) Where non-normal and emergency (i.e. unplanned) operations lead to noise levels in excess of those contained or referred to in this requirement, the undertaker shall—

- (a) Inform the relevant planning authority as soon as reasonably practicable after becoming aware of such an event;
- (b) Inform residents nearby; and
- (c) In either case, provide reasons for the relevant operations and the anticipated duration of the period of exceedance.

20. No part of the authorised development shall be brought into use until a written scheme providing for the monitoring of noise generated during the operation of the authorised development has been submitted to and approved by the relevant planning authority. The scheme shall provide for monitoring at the locations shown on Figure 4 of the North Killingholme Power Project: Outline Operational Noise Compliance Methodology (January 2014) and the method of noise measurement (which shall accord with BS 4142, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances). The scheme shall be implemented to establish baseline noise conditions. This monitoring programme shall be subject to periodic reviews to establish the frequency of noise monitoring and the need for continued monitoring. Throughout the operational lifetime of the development the monitoring programme shall be reviewed following any change in plant, equipment or working practices likely to affect noise conditions and any such change shall be notified in writing to the relevant planning authority; or following a written request by the relevant planning authority in relation to a noise related complaint. Such review shall be submitted to the relevant planning authority for its approval within 4 weeks of the notification or request.

21. In any case where the noise levels specified in requirement 19 or otherwise agreed by the relevant planning authority are exceeded because of an emergency, notification must be given to the relevant planning authority and local residents of the reasons for and anticipated duration of any such exceedences.

22.—(1) Operation of the authorised development shall not be commenced until a scheme has been submitted to the relevant planning authority in consultation with Natural England and approved with the objective that the rating level, as defined in BS4142:1997, of noise from the authorised development following commissioning, recorded at the stated locations, shall not exceed the noise levels listed in the following table except in the case of an emergency, or otherwise agreed in writing by the relevant planning authority.

<i>Location</i>	<i>Rating Level $dB_{Leq 1\ hour}$</i>
NSR8	53
NSR9	47

(2) Compliance with the above limits shall be deemed to be achieved through compliance with a programme of attended noise monitoring and periodic site noise audits and equipment condition reviews via the written scheme to be agreed pursuant to requirement 20 above.

(3) The monitoring of noise pursuant to this requirement shall be compliant with the requirements of ISO 1996 Part 2 (2007).

Construction hours

23.—(1) Construction or demolition work shall not take place other than between 0700 and 1900 hours Monday to Saturday, and shall not take place at all on Sundays or public holidays, unless otherwise agreed by the relevant planning authority or in case of emergency.

(2) If work is proposed outside of the construction work hours referred to in paragraph (1) then the undertaker will submit risk assessments and method statements to the relevant planning authority and will advise local residents by posting the information on its website.

Piling

24.—(1) No piling activities for the construction of the authorised development may commence until a piling method statement describing the measures to be taken to protect the North Killingholme Haven Pits Site of Special Scientific Interest and the Humber Estuary

Special Protection Area has been submitted to and approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

(2) Piling shall be carried out in accordance with the approved method statement unless otherwise approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination..

Construction of Work Nos. 6a and 6b

25.—(1) No construction of Work Nos. 6a and 6b shall be carried out until a strategy to mitigate effects from construction of those works on the North Killingholme Haven Pits has been submitted to and approved by the relevant planning authority, in consultation with Natural England.

(2) The strategy shall include:

- (a) details of a construction programme to ensure that piling construction activities are carried out only from January to March in any calendar year;
- (b) details of the measures to be taken to screen construction activities from the North Killingholme Haven Pits. These measures will include, the construction of a hoarding along the southern boundary of the route of the construction works to reduce noise and visual disturbance to birds in the North Killingholme Haven Pits and, where possible, the retention of the existing hedgerow located between the southern boundary of the order limits and the North Killingholme Haven Pits; and
- (c) details of directional construction lighting to minimise light spill to the North Killingholme Haven Pits.

(3) Construction of Work Nos. 6a and 6b shall be carried out in accordance with the approved strategy.

Combined heat and power

26. A facility shall be provided and maintained within Work No. 1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process or space heating and its later connection to such systems.

Control of dust emissions during operation

27.—(1) No part of Work Nos. 2a, 2b, 2c, 5, 6a, 6b, or 7 shall be operated until a written scheme for the management and mitigation of dust emissions from solid fuels during operation of the authorised development substantially in accordance with the Outline Coal Dust Management Plan dated January 2014 has been submitted to and approved by the relevant planning authority (such approval not to be unreasonably withheld).

(2) The approved scheme shall provide for—

- (a) details of the plant comprised in Work No. 6a for the unloading of solid fuels from barges;
- (b) the detailed design of the pipe conveyor comprised in Work No. 6b;
- (c) measures to provide for the minimisation of dust emissions from railway wagons transporting solid fuel to the authorised development;
- (d) the detailed design of any facility comprised in Work No. 5 for the unloading of trains delivering solid fuels;
- (e) measures to control the management of emissions of dust from any of the activities to which sub-paragraphs (a)-(d) relate; and
- (f) types of railway wagon which may be used for the delivery of solid fuel to the authorised development.

(3) Operation of the authorised development shall be carried out in accordance with the approved scheme.

Construction and security lighting scheme

28.—(1) No part of the authorised development shall be carried out until a detailed written construction and security lighting scheme has been prepared in consultation with an experienced bat worker and has been submitted to and approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

(2) The construction and security lighting scheme shall provide for—

- (a) the avoidance of indirect light spill to the north and west of the authorised development including the use of fencing to minimise light spill;
- (b) the minimisation of light spill, including the use of directional lighting and positioning of lights, baffles, cowls and hoods; and
- (c) measures to ensure that any such lighting will be directional and sensitive to the North Killingholme Haven Pits section of the Humber Estuary Special Protection Area and in relation to the bat mitigation strategy set out at requirement 30.

(3) Construction of the authorised development must be carried out in accordance with the approved scheme unless otherwise approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

Permanent Lighting Scheme

29.—(1) No part of the authorised development shall commence until a detailed written permanent lighting scheme has been prepared in consultation with an experienced bat worker and submitted to and approved by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

(2) The permanent lighting scheme shall provide for:

- (a) details of how the lighting design will reduce trespass, glare and spillage;
- (b) measures to ensure that the use of lighting will be restricted to the minimum periods required;
- (c) details of how, where possible, operational lighting will be designed to minimise impacts on relevant ecological receptors as described in the environmental statement; and
- (d) details of aviation warning lights for the flare tower.

(3) The scheme shall be implemented as approved, unless otherwise agreed in writing by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

Bat mitigation strategy

30.—(1) No part of the authorised development shall be carried out and, in particular, no demolition shall take place, until a written strategy for the mitigation of the impacts of the authorised development on bats, as outlined in the environmental statement, has been submitted to and approved by the relevant planning authority.

(2) The strategy shall provide for -

- (a) the details of a vegetative corridor of 20 metres width along the eastern and north-eastern edge of the Operations Area as shown on the ecological mitigation plan to provide a continuous corridor for bat commuting and foraging;
- (b) the details of the planting scheme along the corridor to include a range of species to increase invertebrate density and abundance, trees of appropriate species and height to be planted along the western edge of the corridor to provide a visual barrier to the operations

- area, and the interspersed scrub habitat within the corridor with trees and open grassland to avoid straight lines of vegetation;
- (c) the retention and enhancement of the wet drain along the south-western boundary of the site with planting including night scented, night flowering and nectar rich species;
 - (d) the measures to be taken to minimise any gaps in the corridor on its route crossing the Killingholme Branch Line, Clough Lane and the route of the fuel conveyor;
 - (e) measures to be incorporated into the construction and operational lighting schemes under requirements 28 and 29 to ensure that the corridor is minimised as a dark environment suitable for bats;
 - (f) the retention and enhancement with planting of the existing vegetative strip along the western boundary of the operations area;
 - (g) a programme for carrying out the details of the approved scheme; and
 - (h) details of the management of the corridor for the construction period of the authorised development and the operation of the authorised development.

(3) No part of the authorised development shall be carried out until the approved bat mitigation strategy has been implemented and the construction and operation of the authorised development shall not be carried out except in accordance with the approved strategy unless otherwise agreed by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

(4) No demolition work shall take place until a written strategy for surveys to adequately inform a decision as to whether a European Protected Species Licence is required, has been submitted to and approved by Natural England.

Water vole mitigation strategy

31.—(1) No part of the authorised development shall be carried out until a written strategy for the mitigation of the impacts of the authorised development on water voles, as outlined in the environmental statement, has been submitted to and approved by the relevant planning authority.

(2) The strategy shall provide for -

- (a) details of a programme to survey for the presence of water voles and the location of any water vole burrows in ditches 2B and 3B as shown on the ecology mitigation plan;
- (b) the measures to be taken to address the protection of water voles where these are discovered in locations other than those assessed in the environmental statement including habitat manipulation and displacement methodologies;
- (c) the design and location of a box culvert to be installed beneath the southern access road comprised in Work No. 8;
- (d) the methodology for reporting the results of any surveys required under the scheme to the relevant planning authority, and the steps to be taken to obtain approval for measures to be taken to protect any water voles or water vole burrows that are discovered as part of those surveys;
- (e) enhancement planting to be carried out along ditch 3B, to include species that will not grow so as to over-shade and/or choke the ditch, and measures for a programme of scrub control to reduce shading of the ditch, and measures to ensure that water levels are maintained at an appropriate level for the maintenance of water vole habitat;
- (f) the creation of replacement habitat, within the operations area wherever practicable, to include measures such as the extension of ditch 3B, the creation of additional wet ditches. New habitat will be designed so as to provide structurally suitable conditions for burrows, and appropriate food plants;
- (g) details of the management of any measures to be carried out as part of the water vole mitigation strategy. No construction of the authorised development shall commence until the water vole surveys required under the strategy to be submitted under sub-paragraph

(2) have been carried out and the relevant planning authority has approved any measures to be taken to protect water voles as identified in the strategy.

(3) No construction works for the access road comprised in Work No. 8 shall be commenced until a box culvert is installed according to the specification agreed under the vole mitigation strategy.

(4) The approved water vole mitigation strategy and any measures thereunder shall be implemented and maintained during construction and operation of the development unless otherwise agreed by the relevant planning authority within the constraints of the environmental information assessed and subjected to examination.

Other ecological matters

32. No works shall be carried out to remove or modify the northern water body shown on the ecological mitigation plan until details of measures to enhance the ecological value of the southern water body shown on the ecological mitigation plan have been submitted to and approved by the relevant planning authority and have been carried out in accordance with that approval. The measures shall include enhancement of riparian vegetation using appropriate native species, scrub clearance around the margins of the pond to reduce shading and encroachment, and the planting of areas of grassy bank and reeds to enhance habitat and species diversity.

33.—(1) No part of the authorised development comprised in Works 2a or 5 shall be carried out until a strategy for the establishment of appropriate ecological mitigation in parcels 05/02 and 07/01 as shown on the land plans and described in the book of reference and measures for the relocation of species has been submitted to and approved by the relevant planning authority.

(2) The approved measures shall be implemented prior to construction of any part of the authorised development.

CCS

34. Until the permanent cessation of commercial operation of the authorised development, the undertaker shall not, without the written consent of the Secretary of State:

- (a) dispose of any interest in land which includes the area to be occupied by Work Nos. 2a, 2b, and 2c except by way of a lease having a term of less than 5 years or which is otherwise determinable by the undertaker for the purpose of installing the capture equipment; or
- (b) do any other thing, or allow any other thing to be done or to occur, which may reasonably be expected to diminish the ability, within the two years following such act or occurrence or thereafter, to install and operate the capture equipment on the designated site.

35.—(1) The undertaker shall make a report (“monitoring report”) to the Secretary of State:

- (a) on or before the date three months from the date upon which electricity is first exported by the authorised development; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) The monitoring report shall provide evidence that the undertaker has complied with Requirement 34:

- (a) in the case of the first monitoring report, since this Order was made; and
- (b) in the case of any subsequent report, since the making of the previous monitoring report, and explain how the undertaker expects to continue to comply with Requirement 34 over the ensuing two years.

(3) Each monitoring report shall state whether the undertaker considers that some or all of the technology referred to in the current CCS proposals from time to time will not work, and explain the reasons for any such conclusion.

(4) Each monitoring report shall identify any other impediment of which the undertaker is aware from time to time as a result of which it considers that any aspect of what is proposed in the current CCS proposals is likely or certain not to be technically feasible.

(5) Any monitoring reports which identify such an impediment shall state, with reasons, whether the undertaker considers it technically feasible to overcome the impediment by adopting revised or alternative CCS proposals, and, if so, shall include such proposals.

(6) Each monitoring report shall state, with reasons, whether the undertaker has decided to seek any additional consents, permissions, orders or licences, or to modify any existing consents, permissions, orders or licences, in respect of the current CCS proposals in the period referred to in requirement 35(2)(a) or (b) as appropriate.

(7) This requirement shall cease to have effect if the capture equipment is installed, or the authorised development ceases operation permanently or the requirement to submit such a report is removed from law and/or policy.

36.—(1) The generating station comprised in Work No. 1 shall not operate using gas supplied by Work No. 2a unless—

- (a) the fuel used to supply the gas comprises biomass;
- (b) capture equipment is installed on the designated site;
- (c) the Secretary of State has either—
 - (i) provided pursuant to any enactment or otherwise that some or all of the emissions from the authorised development are not to be treated as emissions from fossil fuel; or
 - (ii) otherwise issued a direction that the emissions duty of the undertaker is modified or suspended; or
- (d) in any exemption period under section 58 of the Energy Act 2013^(a) that is applicable to the CCS claim (or any part of it) serving the authorised development.

(2) Where the capture equipment referred to in this requirement comprises alternative technology to that comprised in Work No. 2a (such as post-combustion carbon capture) the generating station comprised in Work No. 1 shall not operate except where it is fuelled wholly or principally by natural gas.

(3) Work No. 2a shall not be operated as allowed by paragraph (1)(b) of this requirement unless:

- (a) the onshore and offshore pipelines, and other apparatus required to connect the authorised development to a site or sites for the storage of captured carbon have been constructed;
- (b) a licence for the use of the site or sites for the storage of captured carbon is in place; and
- (c) an environmental permit has been granted for the operation of the authorised development with gas supplied by Work No. 2a which incorporates conditions relating to the operation of the CCS chain

provided that where and for so long as an environmental permit authorises operation without compliance with paragraphs (a) or (b) of this sub-paragraph those paragraphs shall not apply.

Fire water

37.—(1) No part of the authorised development shall be operated until scheme for the storage and handling of fire water has been submitted to and approved by the relevant planning authority.

(a) 2013 c.32.

- (2) The scheme shall include details of—
- (a) the location and design of the dedicated fire water tank within the operations area; and
 - (b) the kerb to be constructed around the operations area to retain spent fire water on-site prior to on-site treatment and/or removal.
- (3) The approved scheme shall be implemented prior to operation of Work No. 1.

Drainage pond

38.—(1) No works shall be carried out to remove or modify the northernmost pond in the operations area until details of the works to be carried out and a method statement for the carrying out of such works, to be prepared in consultation with CPK, the Environment Agency and North East Lindsey Drainage Board, have been submitted to and approved by the relevant planning authority.

(2) The method statement shall detail protective works which will be carried out to ensure that no contaminants are mobilised by the works. The method statement shall also detail how the works will be carried out to ensure that there will be no detrimental effect on the performance of existing flood attenuation and thereafter once any modified pond is operational. The works shall be carried out in accordance with the approved details.

Site waste management plan

39.—(1) No part of the authorised development shall be constructed until a plan for the management and disposal of waste produced as a result of the construction of the authorised development has been submitted to and approved by the relevant planning authority. The construction of the authorised development shall be carried out in accordance with the approved details.

(2) No part of the authorised development shall be operated until a plan for the management and disposal of waste produced as a result of the operation of the authorised development has been submitted to and approved by the relevant planning authority. The authorised development shall be operated in accordance with the approved details.

Biomass fuel sustainability

40. Biomass shall not be used in the gasifier comprised in the authorised development unless it complies with the applicable mandatory sustainability criteria.

Decommissioning

41.—(1) Within 12 months of the authorised development ceasing to be used for the purposes of generating electricity a site closure and restoration plan for the demolition and removal of the authorised development shall be submitted for approval by the relevant planning authority (such approval not to be unreasonably withheld). The scheme must include the principles set out in the environmental statement and also:

- (a) details of all structures and buildings to be demolished;
- (b) consideration of the effects of leaving below-ground structures permanently in situ together with details of consultations undertaken to consider the need to remove any or all such structures;
- (c) details of the means of removal of the materials resulting from decommissioning works 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 operations area 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 operations area together with details of how such contaminants will be safely disposed of;
- (i) details of how any mitigation measures to be implemented for the protection of ornithology and ecology during construction of the authorised development would be implemented during the decommissioning phase.

(2) The demolition and removal of the authorised development must be carried out fully in accordance with the approved scheme.

Requirements for written approval, etc.

42.—(1) Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing. Thereafter the matter approved shall be carried out in accordance with the approved or agreed details as they subsist from time to time.

(2) Where under any of the above requirements a written scheme is required it shall be accompanied by such illustrations as are necessary and appropriate in the circumstances.

Amendments to approved details

43. 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 shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Flood warning and evacuation plan

44. No part of the authorised development shall come into operation until details of a flood warning and evacuation plan has been submitted to and approved by the relevant planning authority. The authorised development shall only be occupied and operated in accordance with the approved flood warning and evacuation plan.

Aerodrome safeguarding

45. No part of the authorised development shall commence until an Aerodrome Safeguarding Report (to include information required by the Defence Geographic Centre to chart the site for civil aviation purposes) has been submitted to and approved by the relevant planning authority and any mitigation measures for the protection of aviation interests identified in that report shall thereafter be implemented.

Train speed at North Killingholme Haven Pits

46.—(1) No solid fuel for the purposes of the authorised development shall be received by rail until a scheme comprising or governing the manner of operation of trains serving the authorised development which limits the speed of those trains upon that part of the Killingholme Branch Line adjacent to North Killingholme Haven Pits, as shown on drawing 64042B-DCO-48, to 10 km/h, or other noise attenuation measures, with at least the same sound attenuation, to address the effects of those trains upon the North Killingholme Haven Pits, has been submitted to and approved in writing by the relevant planning authority in consultation with Natural England. The scheme approved under this requirement shall incorporate provisions for noise monitoring.

(2) The approved measures shall be implemented in relation to trains serving the authorised development.

(3) This requirement shall not apply where the Killingholme Loop, or a scheme having similar effect, has been constructed to provide a connection between the existing Killingholme Branch Line and the Barton-upon-Humber to Habrough railway line, which would allow or require higher speeds.

(4) The scheme approved under this requirement shall not fetter the powers of Network Rail with respect to operation of the railway in any way, nor impose any obligation upon Network Rail to impose or procure speed limits upon its railway network or request any other network and/or physical change.

Acoustic hoarding

47.—(1) No part of the authorised development shall be carried out until details of an acoustic hoarding on the northern and western boundaries of the operations area have been submitted to the relevant planning authority and approved in writing.

(2) The acoustic hoarding shall be—

- (a) at least 5m in height; and
- (b) designed in consultation with an acoustics specialist to provide maximum noise attenuation for the benefit of avian receptors to the north and west of the operations area.

(3) The acoustic hoarding shall be erected and maintained during any works of construction for the authorised development.

Visual attenuation of train movements

48.—(1) Unless otherwise agreed by the relevant planning authority in consultation with Natural England, no trains shall serve the authorised development until a scheme of planting, to be carried out adjacent to and both north and south of the Killingholme Branch Railway Line as it passes North Killingholme Haven Pits as shown on drawing 64042B-DCO-48, has been submitted to and approved in writing by the relevant planning authority in consultation with Natural England and Network Rail.

(2) The approved scheme shall:

- (a) make provision for planting or other measures to close gaps in existing vegetation adjacent to the railway line;
- (b) include details of the species and location of any proposed planting;
- (c) provide for sufficient visual screening of train movements on the railway line from protected avian receptors at North Killingholme Haven Pits when fully grown;
- (d) make provision for circumstances where planting is removed, dies or becomes seriously damaged or diseased after planting, or maintenance in the case of other measures adopted for this purpose;
- (e) provide for use of native species of local origin to be used in planting where available and practicable; and
- (f) set out when following planting solid fuel will be delivered by rail to the authorised development and such alternative measures as are necessary in the event that planting is not fully or sufficiently grown at such time as solid fuel deliveries are intended to commence by rail to the authorised development.

(3) The operation of the authorised development shall not be served by rail except where the approved scheme has been carried out or alternative measures authorised under paragraph (2)(a) and/or (2)(f) of this requirement are in place provided that where such measures include a permanent hoarding, or sufficient alternative, having the same visual attenuation effect, no planting scheme shall be required.

(4) This requirement shall not apply where the Killingholme Loop, or a scheme having similar effect, has been constructed to provide a connection between the existing Killingholme Branch Line and the Barton-upon-Humber to Habrough railway line.

Control of Construction noise at North Killingholme Haven Pits

49.—(1) Construction of works No. 6a and 6b adjacent to the North Killingholme Haven Pits, as shown on drawing 64042B-DCO-48, shall not take place except in accordance with a scheme that has been submitted to and approved in writing by the relevant planning authority in consultation with Natural England in advance of such works. The approved scheme shall address the period outside the months January to March (January to March inclusive being the only months in which piling may occur) and shall have the objective that the rating level of construction noise from the construction of works No. 6a and 6b adjacent to the North Killingholme Haven Pits shall not exceed both the LAeq rating level and the mean LAmax rating level as listed in the following table in any 12 hour period except in case of emergency or otherwise as agreed in writing by the relevant planning authority, in consultation with Natural England.

<i>Location</i>	<i>Rating Level dB, LAeq, 12 hour</i>	<i>Rating Level (mean)</i>	<i>dB, LAmax</i>
NSR A, North of Haven Road (see Drawing Reference 64042B-Natural England-01)	56		75

(2) Compliance with the above limits shall be deemed to be achieved through compliance with a programme of attended noise monitoring and periodic site noise audits and equipment condition reviews pursuant to the approved scheme.

(3) The monitoring of noise pursuant to this requirement shall be compliant with the requirements of ISO 1996 Part 2 (2007).

(4) The mean LAmax will be calculated as the logarithmic average of LAmax values recorded at NSR A using a Class A integrating sound level meter, with a 15-minute sampling period, operating continuously throughout the entire construction day. In processing the recorded data to calculate the mean LAmax, the dataset over the course of the construction day could show “sampling periods of no construction activity”. These “sampling periods of no construction activity” will not be included in the mean LA max calculation.

SCHEDULE 2

Article 10

Streets Subject to Street Works

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street work</i>
North Lincolnshire	Church Side College Road Jericho Lane Skitter Road/Station Road Clough Lane Chase Hill Road East Halton Road West Middle Mere Road Haven Road

SCHEDULE 3

Article 11

Streets

Streets to be Temporarily Stopped Up

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>
North Lincolnshire District	FP50	within the footpath diversion zone
	FP71	within the footpath diversion zone
	FP74	within the footpath diversion zone
	FP76	within the footpath diversion zone
	FP77	within the footpath diversion zone
	FP84	within the footpath diversion zone
	FP86	within the footpath diversion zone

SCHEDULE 4

Article 12

Access to Works

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Description of access</i>
North Lincolnshire District	Access No. A1 - Church Side Access No. A2 - College Road Access No. A3 - Jericho Lane Access No. A4 - Skitter Road Access No. A5 - Station Road

SCHEDULE 5

Article 25

Article 26

Land of which temporary possession may be taken

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Number of land shown on plan</i>	<i>Purpose for which temporary possession may be taken</i>
North Lincolnshire	05/10, 06/03, 06/08, 06/09, 08/11	Provision of a working area, laydown area and construction site for the purposes of the authorised development
	08/04	Provision of a working area and constructions site, and carrying out an maintaining ecological improvements and

rights of access to establish
and maintain the same.

SCHEDULE 6

Article 36

Deemed Marine Licence

PART 1

Introductory

Interpretation

1.—(1) In this Schedule—

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“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;

“environmental statement” means the environmental statement submitted with the application for the Order;

“the Health and Safety Executive” means the body established under section 10 of the Health and Safety at Work etc. Act 1974 or any successor to its statutory functions or other authority performing, carrying out or having the same regulatory functions as the HSE at the date of this licence;

“licence holder” means the undertaker and any agent or contractor acting on its behalf;

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licenced activity” means any activity described in Part 2 of this Schedule;

“MMO” means the Marine Management Organisation;

“marine piles” means piles that will be in a free water condition during construction;

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

“Natural England” means the body established by section 1 of the Natural Environment and Rural Communities Act 2006 or any successor to its statutory functions;

“the Order” means the North Killingholme (Generating Station) Order 201X;

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to two decimal places.

Addresses

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this Schedule is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH and where contact to the MMO District Office is required, the following contact details should be used: Estuary House, Wharncliffe Road, Grimsby, Lincolnshire DN31 3QL. Tel: 01472 355112 email: grimsby@marinemanagment.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this Schedule is infrastructure@marinemangement.org.uk.

PART 2

Licensed Activities

3.—(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 works.

(2) Such activities are authorised in relation to the construction and operation of Work No. 1, more fully described in Schedule 1 to this Order being works for the intake and discharge of cooling water required for the operation of Work No. 1 in or over the sea and/or on or under the sea bed and comprised in Work Nos. 3a, 3b, and 3c.

PART 3

Enforcement

4. Any breach of this Schedule shall not constitute a breach of this Order but shall be subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act as if this Schedule were a licence granted under that Act.

PART 4

Conditions

General conditions

5.—(1) The conditions set out at paragraphs 5 to 25 are licence conditions attached to the deemed marine licence granted by article 36.

(2) For such of the licensed activities that involve the construction, alteration or improvement of works in or over the sea or on or under the sea bed, the conditions shall apply to any person who for the time being owns, occupies or enjoys any use of the licensed activity.

(3) This licence is for 10 years from the date of coming into force of this Order.

6. The licence holder must ensure that the MMO District Marine Office is notified of the timetable of works and operations at least 10 days prior to the commencement of any licensed activity.

7. With respect to any requirements of this Schedule which require the licensed activities to be carried out in accordance with the plans and programmes approved by the MMO, the approved plans and programmes shall be taken to include any amendments that may subsequently be approved in writing by the MMO.

8. The MMO must be notified by the licence holder in writing of any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder at least four weeks before the commencement of the licensed activity.

9. The licence holder must ensure that a copy of this Schedule and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will be carrying out any licensed activity on behalf of the licence holder.

10. Should the licence holder become aware that any of the information on which the granting of this deemed marine licence was based has changed or is likely to change, the licence holder must notify the MMO at the earliest opportunity.

11. The works shall be carried out in accordance with a works schedule to be agreed in writing between the licence holder and the MMO prior to commencement of the works, and any changes to the works schedule are also to be agreed in writing with the MMO.

12.—(1) Prior to any works commencing below the level of Mean High Water Springs, the licence holder must submit detailed method statements to the MMO for approval for each stage of works at least 4 weeks prior to the commencement of works.

(2) All works must be undertaken in accordance with agreed and approved method statements.

13. The licence holder must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Environmental Agency Pollution Prevention Control Guidelines.

14.—(1) The licence holder must only work and access the works site within a defined and marked out area thereby limiting personnel and plant access to the site.

(2) Co-ordinates (in WGS84) and plan diagrams of the work area and access routes must be submitted to the MMO at least 4 weeks prior to the commencement of works.

(3) The written approval of the co-ordinates and plan diagrams by the MMO is required prior to works commencing.

15. The licence holder must ensure that during the works all wastes are stored in designated areas that are isolated from surface water drains, open water and bundled to contain any spillage.

16. The licence holder must ensure that any equipment, temporary structures, waste and debris associated with the works are removed within 6 weeks of completion of the works.

17.—(1) The licence holder must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment.

(2) Concrete and cement mixing and washing areas should be contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of run off entering a watercourse.

18.—(1) The licence holder must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO Marine Pollution Response Team: 08700 785 1050 (office hours), 07770 977 825 (outside office hours) and dispersants@marinemanagement.org.uk or such replacement numbers or email address notified to the licence holder by the MMO in writing.

19. The licence holder must ensure that a Notice to Mariners is issued at least 10 days prior to works commencing warning of the start date for the construction of the works and updated as appropriate.

Cooling water intake conditions

20.—(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 cooling water intake system within the Humber Estuary on the aquatic environment have been submitted to and approved in writing by the MMO. The submitted scheme shall include:—

- (a) details of the passive wedge wire cylinder to be installed over the entrance to the cooling water intake pipes to minimise effects on fish and eels;
- (b) details of how the water intake system will minimise the approach velocity of water to the 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;
- (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; and
- (f) no part of the construction of the cooling water intake shall take place from the inter-tidal area.

The undertaker shall implement the scheme as approved.

(2) 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; and
- (b) At all times maintain any aids to navigation to the reasonable satisfaction of Trinity House.

Piling conditions

21.—(1) No operations consisting of piling shall commence until a piling method statement has been submitted to and agreed in writing by the MMO, following consultation with the Environment Agency and Natural England, such statement to include the following—

- (a) the use of pile pads and pile shrouds at all times;
- (b) the maximum pile diameter to be 1 metre unless otherwise agreed in writing by the MMO, following consultation with Natural England and the Environment Agency;
- (c) a maximum number of 4 piles shall be used;
- (d) soft start procedures to be followed to include a requirement for a soft start of at least 180 seconds for percussive piling of marine piles;
- (e) details of the anticipated spread of piling activity throughout a working day.

(2) Operations consisting of piling shall only be carried out in accordance with the relevant piling method statement.

22. No percussive piling shall take place between 7 April and 1 June inclusive in any calendar year.

23. Where piling is required to be undertaken during March, September and October it shall be not be undertaken at low tide.

24. No percussive piling shall take place before 0600 hours or after 2200 hours on any day.

Detailed design

25.—(1) No works within the relevant phase of the authorised development may commence until details of the siting, design, external appearance and dimensions of Work No. 3a have been submitted to and approved in writing by the Marine Management Organisation.

(2) Work No. 3a shall be carried out in accordance with the approved details.

Procedure for Discharge of Requirements

Applications made under requirement

1.—(1) Where an application has been made to a discharging authority for any agreement or approval required by a requirement included in this Order the discharging authority shall give notice to the undertaker of their decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2, 5 weeks from the day immediately following that on which the application is received by the authority;
- (b) where further information is requested under paragraph 2, 5 weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority shall have the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it shall, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the discharging authority shall issue the consultation to the requirement consultee within 1 business day of receipt of the application, and shall notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 21 days of receipt of the application.

(4) If the discharging authority does not give such notification as specified in sub-paragraph (2) or (3) it shall be deemed to have sufficient information to consider the application and shall not thereafter be entitled to request further information without the prior agreement of the undertaker.

Fees

3.—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement, a fee of £97 shall be paid to that authority.

(2) Any fee paid under this Schedule shall be refunded to the undertaker within 8 weeks of:

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 1,

unless within that period the undertaker agrees, in writing, that the fee shall be retained by the discharging authority and credited in respect of a future application.

Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 1;
- (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process shall be as follows:

- (a) the undertaker shall submit the appeal documentation to the Secretary of State, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker shall on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State shall appoint a person within 10 business days of receiving the appeal documentation and shall forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultee (if applicable) shall submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and shall ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person; and
- (e) the appeal parties shall make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (d) above;

(3) the appointed person shall make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he shall, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required pursuant to sub-paragraph (3) shall be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information shall be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

(7) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal shall be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 1 as if it had been given by the relevant planning authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) shall not be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person shall be met by the undertaker.

(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it shall be made, the appointed person shall have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

Interpretation of Schedule 7

5. In this Schedule—

“the appeal parties” means the discharging authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971; and

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.

SCHEDULE 8

Article 37

Protective Provisions

PART 1

For the Protection of Anglian Water

Application

1. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

Interpretation

2. In this Part of this Schedule—

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991;
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act;

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

Apparatus within standard protection strips

3. The undertaker shall not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding packing, removal, connection or disconnection of any apparatus (where the apparatus is laid in a trench) within the standard protection strips being the strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres;

unless otherwise agreed in writing by Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

Alteration, extension, removal or relocation of apparatus

4. The alteration, extension, removal or relocation of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

Contingency arrangements

5. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

Creation of rights for Anglian Water

6. Regardless of any provision in the Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld, and to be subject to arbitration under article 35.

Alternative means of access to apparatus

7. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

Unmapped sewers, lateral drains or other apparatus

8. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will be given to Anglian Water as soon as reasonably practicable and, if identified by Anglian Water as being within its responsibility, thereupon afforded the same protection as other Anglian Water assets.

Damage or interruption caused by construction

9. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 above, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water.

by reason or in consequence of any such damage or interruption.

10. An amount which apart from this paragraph would be payable to Anglian Water in respect of works by virtue of paragraph 9 of this Part shall if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Anglian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Arbitration

11. Any difference or dispute arising between the undertaker and a protected person under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 35.

PART 2

For the Protection of the Environment Agency

12.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“emergency” means a situation which—

- (a) is unexpected i.e. there is little or no prior warning, or aspects of the event could not have reasonably been predicted in advance, and
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment, and
- (c) requires a need for urgent action. That is, immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

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

13.—(1) Before beginning to construct any specified work, the undertaker shall submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 22.

(3) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been

required by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

- (c) may be given subject to such reasonable modifications to the plans as the Agency may request and such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

14. Without prejudice to the generality of paragraph 13 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

15.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 14, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency shall reasonably require, the undertaker shall construct all or part of the protective works so that they are in place prior to the construction of any specific work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 19, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

16.—(1) Subject to sub-paragraph (6) the undertaker shall, from the commencement of the construction of the specified works, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 19, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker shall cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in a case of emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

17. Subject to paragraph 19, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

18.—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 19, if within such time as may be reasonably practicable for that purpose, being not less than 28 days beginning with the date on which a notice of any damage or expected damage to a fishery is served under sub-paragraph (2) on the Undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their

implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Undertaker.

(4) Subject to paragraph 19, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

19. The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this part of this Schedule; and
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

20.—(1) Without prejudice to the other provisions of this part of this Schedule, the undertaker shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld or delayed.

21. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this part of this Schedule.

22. Any dispute arising between the undertaker and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 35 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

23.—(1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent the Agency's access to and use of Haven Road.

(2) Where construction and operation of the authorised development reasonably requires interference with or obstruction of the free, uninterrupted and safe use of Haven Road or any traffic on Haven Road, a suitable alternative access shall be provided prior to and for the duration of any such interference.

PART 3

For the Protection of Network Rail

24. 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 37, any other person on whom rights or obligations are conferred by that paragraph.

25. 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 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 736 of the Companies Act 1985(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, 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 or depot lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held by or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised project as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

26.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval shall not be unreasonably withheld or delayed but may be subject to reasonable conditions (while recognising that the engineer has sole discretion in matters relating to safety) and 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) Insofar as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (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 project pursuant to this Order.

(a) 1993 c.43.

(b) 1985 c.6.

27.—(1) The undertaker shall not exercise the powers conferred by article 15 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act as applied to this Order by the 2008 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) This Order shall not authorise the acquisition or extinguishment of any existing right of Network Rail except with the agreement of Network Rail which shall not be unreasonably withheld.

28.—(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.

(2) The approval of the engineer under subparagraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 56 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 engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, 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 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 but at the expense of the undertaker, or if Network Rail so agrees such protective works shall be carried out by the undertaker at its own expense 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.

29.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 28(4) shall, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 28;
- (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 approval described in sub-paragraph (1)(a) but subject to sub-paragraph (3) below, 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—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of the undertaker or its servants, contractors or agents.

30. 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.

31. 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.

32.—(1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 28(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening of any part of the authorised project that includes a specified work, in direct consequence of the construction of that specified work, 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, the undertaker shall pay to Network Rail all costs reasonably and properly incurred in constructing 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 desires that part of the specified work 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 28(1), 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 sum referred to in this paragraph and paragraph 33(1)(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.

33.—(1) The undertaker shall repay to Network Rail all fees, costs, charges and expenses reasonably and properly incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 28(3) or in constructing any protective works under the provisions of

paragraph 28(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 and otherwise in connection with the implementation of the provisions of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it shall be reasonably necessary to appoint for inspecting, 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 additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work; and
- (e) 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.

34. 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.

35. Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing, maintaining or working 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, maintenance or working has been given to the undertaker, be repaid by the undertaker to Network Rail.

36. 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.

37.—(1) The undertaker shall pay to Network Rail all costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably and properly incurred by Network Rail—

- (a) by reason of the construction, operation 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 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 act neglect or default 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) may 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 the relevant costs 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 sub-paragraph (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.

38. 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 37 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).

39. 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 work 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 and lands, works or other property referred to in this paragraph.

40. Nothing in the Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993.

41. 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.

42. 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 34 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 grants development consent for, and authorises C.GEN Killingholme Limited to construct, operate and maintain, an electricity generating station at North Killingholme, North Lincolnshire together with all necessary and associated development. For the purposes of the

development that it authorises C.GEN Killingholme Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also authorises the making of alterations to the highway network, provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

REPORT ON S.127 AND S.138 LAND

Introduction

Kelvin MacDonald was appointed by the Secretary of State for Energy and Climate Change to be the s.127 Examiner in respect of applications for certificates under s.127 of the Planning Act 2008, as amended, and notified parties of that appointment in letters dated 19 December 2013 [SEC-010, 011, 014, 015, 017, 021, 022, and 025].

It should be noted that the application for development consent for the North Killingholme Power Project was made on 25 March 2013 and as a result, was not caught by the Transitional and Savings Provisions of the Growth and Infrastructure Act 2013 (which removed the need for certification and consent when seeking to compulsorily acquire land, rights or apparatus owned by statutory undertakers. Therefore, the provisions of the Localism Act 2011 which removed the requirement for a certificate had not yet come into force.

On 15 November 2013 the applicant submitted a number of applications for certificates under s.127 of the Planning Act 2008, as amended on 15 November 2013. These applications were in respect of land held by:

- Associated British Ports;
- Anglian Water Services Limited;
- Centrica KPS Limited;
- Centrica Storage;
- The Environment Agency;
- E.ON UK Plc.;
- E.ON UK Gas;
- Heron Wind Limited;
- National Grid Gas;
- National Grid Electricity Transmission Plc.;
- National Grid Property Holdings Limited;
- Network Rail Infrastructure;
- Optimus Wind; and
- SMart Wind.

On 9 December 2013 an application in respect of s.138 of the Planning Act 2008 was submitted in respect of British Telecom.

During the course of the remainder of the Examination, a number of representations were made on the status of bodies and on the withdrawal of representations and/or s.127 and s.138 applications.

The close of Examination position on each of the bodies listed above is given below:

Able Humber Ports Ltd.

Able Humber Ports Ltd is not the subject of a s.127 or s.138 application

In paras. 5.1.1 and 5.1.2 of the *Written Summary of Oral Representations made by C.Gen Ltd at the Section 127 Hearing on 12 February 2014* [HR-146] C.GEN states that it 'agrees that Able is not currently a statutory undertaker for the purposes of s. 127 Planning Act 2008'. However, it goes on to state that it 'does not intend to withdraw [its] s. 127 application as it considers it necessary to provide for the eventuality that the status of Able might change before a decision is made on C.GEN's application for development consent by the Secretary of State. C.GEN set out the detail of its position at the Compulsory Acquisition Hearing held between 11-13 February 2014.

The s.127 Examiner has concluded that there is no valid s.127 application and does not agree, therefore, with the statement made by the applicant in para. 5.1.3 of the *Written Summary of Oral Representations made by C.Gen Ltd at the Section 127 Hearing on 12 February 2014* [HR-146] in which C.GEN submits that its s127 application is currently unopposed.

The s.127 Examiner explained at the outset of the Compulsory Acquisition hearing held on 12 February 2014, that he was willing to consider representations related to CA issues related to Able Humber Ports Ltd. but would not be dealing with them under s.127.

Anglian Water Services Ltd.

Anglian Water Services Ltd. is no longer the subject of a s.127 or s.138 application and has withdrawn its representations.

DLA Piper UK LLP submitted a letter on behalf of the applicant dated 4 March 2014 [SEC-052]. This stated that: *C.GEN hereby withdraws its applications in respect of Anglian Water under sections 127 and 138 of the Planning Act 2008.* This letter followed submissions from Anglian Water Services Ltd. [SEC-047] withdrawing its representations in respect of the applicant's s.127 and s.138 application (letter dated 4 March 2014).

In response to the ExA's third round written questions in respect of CA03/01 [RFP-283], Anglian Water Services clarified that:

AWS wish their representations to remain on record as useful background information for the Examining Authority but its representations as far as Section 127 and Section 138 are concerned are withdrawn and the application is unopposed.

Associated British Ports

Associated British Ports is no longer the subject of a s.127 or s.138 application.

DLA Piper UK LLP submitted a letter on behalf of the applicant dated 11 March 2014 [SEC-053]. This stated that: *C.GEN hereby withdraws its applications in respect of ABP under section 127 of the Planning Act 2008. and that: C.Gen will no longer be seeking powers of compulsory acquisition over ABP's land or interests in land. Pursuant to an amendment to Article 16(5) of the final draft Development Consent Order submitted by C.GEN on 11 March 2014, any land or interest in land owned for the time being by ABP shall be excluded from the powers of compulsory acquisition under Articles 16 – 27 of the Order.*

British Telecom

British Telecom is no longer the subject of a s.138 application. In a letter dated 11 February 2013 [SEC-048], DLA Piper on behalf of the applicant withdrew its application in respect of s.138.

The Environment Agency

The Environment Agency is no longer the subject of a s.127 or s.138 application.

DLA Piper UK LLP submitted a letter on behalf of the applicant dated 10 February 2014 [SEC-049]. This stated that:

C.GEN hereby withdraws its applications in respect of the Environment Agency under sections 127 and 138 of the Planning Act 2008.

This letter followed the Environment Agency's response to q.s127/07 in the Environment Agency's response to the Examining Authority's 2nd Written Questions, dated 7 January 2014, [REP-219] which stated that:

The Environment Agency presently maintains the majority of these sea defences using its statutory powers under s.165 Water Resources Act 1991. However, as the Environment Agency has not acquired any interest in the sea defences for the purposes of its

undertaking, an application for a certificate under s.127 Planning Act 2008 is not required

and that:

as the sea defences are neither vested in nor belong to the Environment Agency, as required by the definitions of "relevant right" in s.138 (2)(a) and "relevant apparatus" in s.138(3)(a), an application for a certificate under s.138 Planning Act 2008 is not required.

Centrica KPS Limited and Centrica Storage

Centrica KPS Limited and Centrica Storage remain the subject of applications for a certificate under s.127, and in respect of s.138 and are considered below.

E.ON UK Plc. and E.ON UK Gas

E.ON UK Plc. and E.ON UK Gas remain the subject of applications for certificates under s.127, and in respect of s.138 and are considered below.

Heron Wind Limited

Heron Wind Limited remains the subject of applications for a certificate under s.127, and in respect of s.138 and is considered below.

National Grid Gas plc & National Grid Electricity Transmission

Both National Grid Gas plc. & National Grid Electricity Transmission remain the subject of applications for certificates under s.127, and in respect of s.138 and are considered below.

National Grid Property Holdings Limited

National Grid Property Holdings Limited is not the subject of a s.127 or s.138 application as it does not consider itself to be a statutory undertaker.

Network Rail Infrastructure

Network Rail Infrastructure is no longer the subject of a s.127 or s.138 application

DLA Piper UK LLP submitted a letter on behalf of the applicant dated 4 March 2014 [SEC-050]. This stated that: *C.GEN hereby withdraws its applications in respect of Network Rail under sections 127 and 138 of the Planning Act 2008.*

This letter followed a submission from Network Rail (e-mail dated 27 February 2014) [SEC-051] which stated that: *Network Rail is satisfied that its interests in the Order Land are now adequately protected and wishes to withdraw its objections in respect of the Application and section 127 of the Planning Act 2008 with immediate effect.*

Optimus Wind Limited

Optimus Wind remains the subject of applications for a certificate under s.127, and in respect of s.138 and is considered below.

SMart Wind

SMart Wind is no longer the subject of a s.127 or s.138 application as it does not consider itself to be a statutory undertaker. It remains as the agent of Heron Wind and Optimus Wind.

Two of the applications for Certificates under s.127 include applications for CA of land and, therefore, the tests in s.127 (3)(a) or (b) pertain; namely that (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

All of the applications for certificates under s.127 include applications for CA of rights and, therefore, the tests in s.127 (6)(a) or (b) pertain; namely that the right can be purchased without serious detriment to the carrying on of the undertaking, or that any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

All the applications for certificates under s.127 also contain requests for consent to the inclusion of a provision under s.138 of the Planning Act 2008 as amended.

The test to be applied in these cases is that the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates (s.138(4)(a)).

These tests are applied in the examination of the applications for Certificates considered below.

CENTRICA KPS LIMITED.

The applicant made an undated application for certificates under s.127 and for consent under s.138 to the inclusion of a provision in respect of Centrica KPS Limited which was placed on the PINS website on 19 December 2013.

Centrica Plc. has confirmed [REP-230] that Centrica KPS Limited and Centrica Storage Limited are wholly-owned subsidiaries of Centrica Plc., a statutory undertaker for the purposes of s.127(8) of the Planning Act 2008. It has also confirmed that the land and interests referenced in the s.127 application have been acquired and are used for the purposes of Centrica's undertaking, namely the Killingholme Power Station; and that S.138 applies in the case of Centrica.

The applications are in respect of plots 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04, 09/05.

The revised Book of Reference [APP-109] states that the right to be acquired in respect of these plots is *to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same*

The applicant's case

The relevant s.127 application [SEC-028] states, in relation both to s.127 and s.138 that:

For the purpose of the Application, it is C.GEN's case that:

11.1.1 there may be interference with CKPS' land and rights during the construction operation and maintenance of the Project. Such interference includes but is not limited to the interface which is understood to exist between CKPS' electrical grid connection into Killingholme Substation and C.GEN's proposed connection into Killingholme Substation. Further CKPS also has a right to install a gas pipeline on land to the north of Killingholme Power Station;

11.1.2 Centrica, on behalf of both CKPS and Centrica Storage Limited, has made detailed relevant representations regarding the impact of the proposed works associated with the Project on their

undertakings. However, since its representations were submitted on 21 June 2013, C.GEN's application for withdrawal of certain land from the Proposed Order Limits, which was approved by a decision of the examining authority on 4 October 2013, has significantly reduced the area of land in which CKPS hold rights which are affected by the Application. In any event, the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that CKPS' rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking;

11.1.3 C.GEN requires rights relating to the establishment, operation and maintenance of an Electrical Grid Connection and Gas Connection which will affect CKPS land and rights comprised in plots 07/07, 07/08, 07/09, and the establishment, operation and maintenance of an Electrical Grid Connection comprised in plots 07/10, 07/11, 09/01, 09/02, 09/03, 09/04 and 09/05; and

11.1.4 protective provisions appropriate for CKPS' undertaking are proposed to be inserted in the Proposed Order.

The s.127 Examiner notes in respect of the statement above that the revised Book of Reference [APP-109] no longer specifies a right in relation to the gas connection in relation to plots 07/07, 07/08, and 07/09.

I also note that the revised Book of Reference [APP-109] no longer contains plot 09/03.

The Statutory Undertaker's case

Para 3.38 of Centrica's Written Representation [REP-047], dated October 2013 states that:

Centrica considers that the compulsory acquisition of the land within the proposed electrical grid connection corridor and the extinguishment of its rights and removal of its apparatus cannot take place without serious detriment to its undertakings at the Killingholme Power Station.

In its response to second round questions [REP-230], dated 7 January 2014, Centrica has stated that:

Centrica has considered the section 127 application made by the Applicant and in its view the Applicant has failed to satisfy the requirements of sections s122 and s127/138. The Applicant's case is simply that the protective provisions are sufficient to protect against any detriment to the undertaking.

and that:

Centrica is in continued negotiations with C.GEN to seek a resolution to these issues prior to the next CPO hearings, however unless and until the draft DCO contains adequate insulation for Centrica's undertaking against the powers sought there will result serious detriment to that undertaking and Centrica maintains its objections in relation to the compulsory purchase and s127 applications.

In its *Written Summary of Oral Submissions made by Centrica Storage Limited and Centrica KPS Limited ("Centrica") at the Compulsory Purchase and Section 127 Hearings, 11-12 February 2014 [HR-137]* Centrica states that it reiterates its representations made in October 2013 (paragraph 2.11) that the order land is required for replanting of the power station, and any interference with these requirements would compromise the future operation and function of the power station.

and that:

There remains a real risk of serious detriment to Centrica's undertaking and the future operability of the power station if the protective provisions in the draft Development Consent Order remain inadequate and do not provide sufficient protection or qualification on the exercise of powers as proposed in the Order.

Centrica therefore seeks the proposed protective provision, without which there would be an unacceptable risk of damage to its assets and the operation of the power station.

Protective Provisions

Schedule 8 of the applicant's final draft DCO [APP-114] contains draft Protective Provisions for the protection of Centrica Plc. (Part 5).

I note that, at the time of the close of the Examination, this draft Provision was not agreed between Centrica Plc. and the applicant.

In its paper of proposed amendments to the draft Development Consent Order [REP-315] the applicant had put forward an additional provision to the draft provisions but, in its response to that, dated 7 March 2014 [APP-310] Centrica Plc. states that:

Centrica does not agree to the new provision and does not believe that it adequately addresses its concerns relating to the impact of unfettered powers of compulsory acquisition on its interests and undertaking.

Centrica instead requested the re-insertion of the provision that had been deleted by the applicant from version 4 of the draft DCO [APP-087]:

68. -Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of any protected person or acquire any land or other interest of any protected person or create any new rights over the same otherwise than by agreement of the relevant protected person, which shall not be unreasonably withheld.

In suggesting this wording, Centrica cites other instances where this approach has been used including in the Able Marine Energy Park Development Consent Order 2013

The v.5 draft DCO with tracked changes [APP-108] submitted by the applicant has this clause struck through with the note that 'C.GEN does not agree to the inclusion of this provision'. The applicant's final draft DCO, submitted on 11 March 2014, [APP-114] does not contain this provision.

Examiner's conclusions

The issues surrounding these plots are considered in detail in paras. 6.384 to 6.435 (Electricity Transmission Cables) in the main report, above. The ExA recommend that the application for the CA of rights in respect of these plots should not be granted for the reasons given in that section.

In respect of the s.127 application, I have taken into account that the applicant's case relies on the nature of the proposed works and the inclusion of protective measures and that Centrica KPS Limited has stated that there remains a real risk of serious detriment to Centrica's undertaking.

The ExA has considered the nature of the works in the main body of this report. I have already noted that there were no agreed protective provisions at the time of the close of the Examination.

Recommendation

Taking into account all the representations and evidence presented:

In relation to s.127, I conclude that, without the certainty that Protective Provisions have been agreed between the applicant and Centrica KPS Limited, the Secretary of State could not be satisfied that the right could be purchased compulsorily without serious detriment to the carrying on of Centrica KPS Limited's undertaking.

I cannot recommend therefore that the Secretary of State should issue a Certificate under s.127(5)(b) in respect of plots 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05 held by Centrica KPS Limited.

In relation to s.138, I cannot recommend that, without the certainty that Protective Provisions have been agreed between the applicant and Centrica KPS Limited, the Secretary of State should consent to the inclusion of Article 27 in respect of plots 07/07, 07/08, 07/09, 07/10, 07/11, 09/01, 09/02, 09/04 and 09/05 held by Centrica KPS Limited.

CENTRICA STORAGE LIMITED

The applicant made an undated application for certificates under s.127 and for consent to the inclusion of a provision under s.138 in respect of Centrica Storage Limited which was placed on the PINS website on 19 December 2013.

Centrica Plc. has confirmed [REP-230] that Centrica KPS Limited and Centrica Storage Limited are wholly-owned subsidiaries of Centrica Plc., a statutory undertaker for the purposes of s.127(8) of the Planning Act 2008. It has also confirmed that the land and interests referenced in the s.127 application have been acquired and are used for the purposes of Centrica's undertaking, namely the Killingholme Power Station; and that s.138 applies in the case of Centrica.

The applications are in respect of plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, 08/03.

The revised Book of Reference [APP-109] states that the right to be acquired in respect of plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03 is *to acquire all interests*

The revised Book of Reference [APP-109] states that the right to be acquired in respect of plots 05/06 05/09 is *to install and keep installed, maintain, and operate pipes and associated infrastructure for the transmission of water for cooling and other purposes to and from the River Humber required for the authorised development and rights of access to install and keep installed, maintain and operate the same and for carrying out and maintaining ecological improvements and rights of access to establish and maintain the same.*

I note that, whilst the s.127 Notice provided by the applicant in respect of Centrica Storage Ltd [SEC-063] contains a reference to each of the plots referred to above and to both the acquisition of all interests and of the new right, the Certificate provided [SEC-055] only refers to plots 05/06 and 05/09. If the Secretary of State is not minded to accept my recommendation, below, then the wording in any Notice and Certificate will need to be aligned.

The applicant's case

The s.127 application in respect of Centrica Storage Limited [SEC-029] states that in relation to s.127 and s.138:

For the purpose of the Application, it is C.GEN's case that:

11.1.1 there may be interference with CS's rights and infrastructure during the construction, operation and maintenance of the Project. Such interference includes but is not limited to CS's condensate pipeline which runs from CS's gas storage terminal at Easington to storage tanks the Port of Immingham and its route is in part located on land to the edge of the Operations Area;

11.1.2 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that CS's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking;

11.1.3 C.GEN seeks to acquire land and/or interests in land comprising plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03 in order to construct and operate the combined cycle plant, gasification facility, flare stacks, railway sidings and to install equipment connecting the proposed gasification facility and flare stacks, to construct pipes for discharge of used cooling water and to develop an access road; and

11.1.4 protective provisions appropriate for CS's undertaking are proposed to be inserted in the Proposed Order.

The Statutory Undertaker's case

Para 3.47 of Centrica's Written Representation [REP-047], dated October 2013 states that:

The cooling water pipelines are vital to the operation of the Killingholme Power Station. It is therefore essential that for Centrica to be able to carry on its statutory undertaking at the power station, these pipelines remain in situ and Centrica continues to have rights to access them for inspection, maintenance, repair and replacement. Any removal of these rights or removal of the pipeline resulting from the compulsory acquisition of this land would therefore have a detrimental impact on Centrica's statutory undertaking at the Killingholme power station and would fail the tests at Section 127 of the Planning Act 2008.

In its response to second round questions [REP-230], dated 7 January 2014, Centrica has stated that:

Centrica has considered the section 127 application made by the Applicant and in its view the Applicant has failed to satisfy the requirements of sections s122 and s127/138. The Applicant's case is simply that the protective provisions are sufficient to protect against any detriment to the undertaking.

and that:

Centrica is in continued negotiations with C.GEN to seek a resolution to these issues prior to the next CPO hearings, however unless and until the draft DCO contains adequate insulation for Centrica's undertaking against the powers sought there will result serious detriment to that undertaking and Centrica maintains its objections in relation to the compulsory purchase and s127 applications.

Protective Provisions

Schedule 8 of the final draft [APP-114] contains draft Protective Provisions for the protection of Centrica Plc. (Part 5).

I note that, at the time of the close of the Examination, this draft Provision was not agreed between Centrica Plc. and the applicant.

In its paper of proposed amendments to the draft Development Consent Order [REP-315] the applicant had put forward an additional provision to the draft provisions but, in its response to that, dated 7 March 2014 [APP-310] Centrica Plc. states that:

Centrica does not agree to the new provision and does not believe that it adequately addresses its concerns relating to the impact of unfettered powers of compulsory acquisition on its interests and undertaking.

Centrica instead requested the re-insertion of the provision that had been deleted by the applicant from version 4 of the draft DCO [APP-087] that would have had the effect, in essence, that any acquisition of rights or overriding of easements should be done by agreement of the relevant protected person, which shall not be unreasonably withheld.

Such a provision does not occur in the applicant's final draft of the DCO [APP-114].

The Examiner's conclusions

I note that the applicant's case, as quoted above, relies on nature of the proposed works and the inclusion of protective measures.

In respect of the nature of the works, I note that Para 3.7.3 of the applicant's comments on Centrica's Written Representation [REP-156] states that:

C.GEN is not seeking powers of compulsory acquisition over the land used for Centrica's cooling water pipeline, as shown in Appendix Two of Centrica's Written Representation.

and, in para 3.7.7, that:

C.GEN requires the removal of all easements from the Operations Area and to ensure that all historic rights and easements are extinguished, save as are required for existing retained apparatus such as that of CSL. C.GEN will provide protective provisions to Centrica. They include a requirement for C.GEN to grant a new easement/right in relation to infrastructure that is relocated. Further there are provisions which require C.GEN to agree a method statement to undertake any works which take place within 10 metres of the condensate pipe. As such, C.GEN considers that the condensate pipeline will be fully protected.

These comments still rely on the existence of protective Provisions and I have already noted that there were no Protective Provisions agreed by both parties at the close of the Examination.

Recommendation

Taking into account all the representations and evidence presented:

In relation to s.127, I conclude that, without the certainty that Protective Provisions have been agreed between the applicant and Centrica Storage Limited, the Secretary of State could not be satisfied that the right could be purchased compulsorily without serious detriment to the carrying on of Centrica Storage Limited's undertaking.

I cannot recommend therefore that the Secretary of State should issue a Certificate under s.127(5)(b) in respect of plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03 held by Centrica Storage Limited.

In relation to Section 138, I cannot recommend that, without the certainty that Protective Provisions have been agreed between the applicant and Centrica Storage Limited, the Secretary of State should consent to the inclusion of Article 27 in respect of plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03 held by Centrica Storage Limited.

E.ON UK GAS LTD.

The applicant made an undated application for certificates under s.127 and for consent to the inclusion of a provision under s.138 [SEC-030] which was placed on the PINS website on 19 December 2013. The applicant made applications in respect of both E.ON UK plc. and E.ON UK Gas Ltd but all the representations considered below have been made by E.ON UK plc.

E.ON UK Gas Ltd. has not submitted any representation stating that it does not fulfil the s.127 tests for being classified as a Statutory Undertaker.

The applications are in respect of plots 07/08, 07/09, 07/11, 09/02, 09/03 and 09/05.

The s.127 Examiner notes that the revised Book of Reference [APP-109] and the Certificate [SEC-056] and Notice [SEC-064] provided by the applicant no longer contain plot 09/03.

The revised Book of Reference [APP-109] states that the right to be acquired in respect of these plots is *to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same*

The applicant's case

The relevant s.127 application [SEC-030] states that in relation to s.127 and s.138:

For the purpose of the Application, it is C.GEN's case that:

11.1.1 there may be interference with E.ON Gas' rights, land and property during the construction, operation and maintenance of the Project;

11.1.2 the nature of the proposed works means that the Secretary of State can be confident that E.ON Gas' rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking; and

11.1.3 C.GEN requires rights relating to the establishment, operation and maintenance of an Electrical Grid Connection and Gas Connection which will affect E.ON Gas' land and rights comprised in plots 07/08 and 07/09, and rights relating to the establishment, operation and maintenance of an Electrical Grid Connection on land comprised in plots 07/11, 09/02, 09/03 and 09/05;

The s.127 Examiner notes that the revised Book of Reference [APP-109] no longer seeks to apply for rights in relation to the Gas Connection in respect of plots 07/08 and 07/09.

In para. 3.3.1 of the *Written Summary of Oral Representations made by C.Gen (Killingholme) Ltd at the Section 127 Hearing on 12 February 2014* [HR-146] the applicant states that:

C.GEN understands that E.ON UK has not made a representation in respect of C.GEN's s.127 application. Therefore, the s.127 application in respect of E.ON UK remains live but unopposed.

The s.127 Examiner disagrees with this summary because, as stated below, E.ON UK plc. has made two representations and the s.127 Examiner notes that s.127(1)(b) refers only to 'a representation [...] about an application for an order granting development consent' and not more specifically to a representation in respect of a s.127 application.

The Statutory Undertaker's case

E.ON UK plc. has made two representations. First, it stated in its Relevant Representation [RR-016] dated 20 June 2013 that: *our main concern is in respect of what is identified as the Electrical Grid Connection Land and the impact that this has on our operational power station. This route as identified by the applicant needs to be refined to ensure that it doesn't have a negative impact on our ability to run our Power Station without undue inconvenience or incurring additional cost.*

Second, in an e-mail dated 14 October 2013 [WR-013], a Senior Surveyor for the company stated that:

I confirm that I have concerns about the proposal for blanket reservation of rights across the E.ON Power Station Site. Whilst E.ON will co-operate for the necessary connections into the

National Grid Substation (that sits within the boundaries of our site) we reserve the right to direct the actual route of the cables to minimise the impact on our site and also to enable us to meet the needs of competing parties who have similar requirements for access to the substation. This flexibility is necessary to protect the operational needs of the existing E.ON power station and its associated assets.

The applicant responded to that submission in its undated response to E.ON's written response (placed on the website on 11 November 2013) in which it stated that; *it is not seeking the blanket reservation of rights across the E.ON Power Station site. [...] The plots affected by the proposed rights [...] are limited to land surrounding Killingholme Substation and do not include the Power Station site.*

E.ON has not made any direct submissions since October 2013 and it has not given evidence at either the November 2013 or the February 2014 Hearings.

In correspondence contained in the Appendix to the applicant's response to third questions [REP-305], E.ON confirmed that it agreed with the summary of the position as set out by the applicant that: *E.ON agrees in principle to provide access to Killingholme Substation over land in its ownership. C.Gen remains committed to acquiring the necessary property interests by agreement and would welcome engagement from E.ON.*

However, the applicant's response to the EXA's third round of questions [REP-304] stated that: *C.GEN considers that it is unlikely that agreement will now be reached but expressed its willingness to carry on negotiating.*

Protective Provisions

Schedule 8 of the final draft DCO [APP-114] does not contain draft Protective Provisions for the protection of E.ON. The applicant's case as quoted above, does not rely on the existence of these.

The Examiner's conclusions

The issues surrounding these plots are considered in detail in paras. 6.384 to 6.435 (Electricity Transmission Cables) in the main

report, above. This recommends that the application for the Compulsory Acquisition of rights in respect of these plots should not be granted for the reasons given in that section.

Given that recommendation but solely in relation to the application for a s.127 Certificate, I note that the Relevant Representation from E.ON. spoke of possible negative impact and undue inconvenience but that it agrees in principle to provide access to Killingholme Substation over land in its ownership. E.ON. did not put forward a case that there would be serious detriment to its undertaking but talked of the need to direct the actual route of the cables.

Recommendation

Taking into account all the representations and evidence presented;

I recommend that, should the Secretary of State not accept the recommendation in para. 6.435 of the main report, the Secretary of State should be satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

In that circumstance, I recommend that the Secretary of State should issue a Certificate under s.127(5)(b) in respect E.ON UK Gas Ltd. in respect of plots 07/08, 07/09, 07/11, 09/02, and 09/05.

I therefore attach a draft Certificate and Notice to this Appendix.

In that circumstance, I recommend that the Secretary of State should consent to the inclusion of a provision in relation to s.138 in respect E.ON UK Gas Ltd. in respect of plots 07/08, 07/09, 07/11, 09/02, and 09/05.

E.ON UK PLC

The applicant made an undated application for certificates under s.127 and for consent to the inclusion of a provision under s.138 [SEC-030] which was placed on the PINS website on 19 December 2013. The applicant made applications in respect of both E.ON UK plc. and E.ON UK Gas Ltd but all the representations considered below have been made by E.ON UK plc.

E.ON UK Plc. has not submitted any representation stating that it does not fulfil the s.127 tests for being classified as a Statutory Undertaker.

The applications are in respect of plots 07/08, 07/09, 07/11, 09/02, 09/03, 09/04 and 09/05.

The s.127 Examiner notes that the revised Book of Reference [APP-109] and the Certificate [SEC-057] and Notice [SEC-065] provided by the applicant no longer contain plot 09/03.

The revised Book of Reference [APP-109] states that the right to be acquired in respect of these plots is *to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same*

The applicant's case

The relevant s.127 application [SEC-031] states that in relation to s.127 and s.138:

For the purpose of the Application, it is C.GEN's case that:

11.1.1 there may be interference with E.ON's rights, land and property during the construction operation and maintenance of the Project;

11.1.2 E.ON have made relevant representations stating that, in principle, there is no objection to the Project but that there is concern in respect of the Electrical Grid Connection Land and the impacts that this may have on operation of the E.ON Power Station. The nature of the proposed works means that the

Secretary of State can be confident that E.ON's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking; and

11.1.3 C.GEN requires rights relating to the establishment, operation and maintenance of an Electrical Grid Connection and Gas Connection which will affect E.ON's land and rights comprised in plots 07/08 and 07/09, and rights relating to the establishment, operation and maintenance of an Electrical Grid Connection on land comprised in plots 07/11, 09/02, 09/03, 09/04 and 09/05;

The s.127 Examiner notes that the revised Book of Reference [APP-109] no longer seeks to apply for rights in relation to the Gas Connection in respect of plots 07/08 and 07/09.

In para. 3.3.1 of the *Written Summary of Oral Representations made by C.Gen (Killingholme) Ltd at the Section 127 Hearing on 12 February 2014* [HR-146] that applicant states that:

C.GEN understands that E.ON UK has not made a representation in respect of C.GEN's s.127 application. Therefore, the s.127 application in respect of E.ON UK remains live but unopposed.

The s.127 Examiner disagrees with this summary because, as stated below, E.ON UK plc. has made two representations and the s.127 Examiner notes that s.127(1)(b) refers only to 'a representation [...] about an application for an order granting development consent' and not more specifically to a representation in respect of a s.127 application.

The Statutory Undertaker's case

E.ON UK plc. has made two representations. First, it stated in its Relevant Representation [RR-016] dated 20 June 2013 that: *our main concern is in respect of what is identified as the Electrical Grid Connection Land and the impact that this has on our operational power station. This route as identified by the applicant needs to be refined to ensure that it doesn't have a negative impact on our ability to run our Power Station without undue inconvenience or incurring additional cost.*

Second, in an e-mail dated 14 October 2013 [WR-013], a Senior Surveyor for the company stated that:

I confirm that I have concerns about the proposal for blanket reservation of rights across the E.ON Power Station Site. Whilst E.ON will co-operate for the necessary connections into the National Grid Substation (that sits within the boundaries of our site) we reserve the right to direct the actual route of the cables to minimise the impact on our site and also to enable us to meet the needs of competing parties who have similar requirements for access to the substation. This flexibility is necessary to protect the operational needs of the existing E.ON power station and its associated assets.

The applicant responded to that submission in its undated response to E.ON's Written Representation (placed on the website on 11 November 2013) [REP-146] in which it stated that; *it is not seeking the blanket reservation of rights across the E.ON Power Station site. [...] The plots affected by the proposed rights [...] are limited to land surrounding Killingholme Substation and do not include the Power Station site.*

E.ON has not made any direct submissions since October 2013 and it has not given evidence at either the November 2013 or the February 2014 Hearings.

In correspondence contained in the Appendix to the applicant's response to third questions [REP-305], E.ON confirmed that it agreed with the summary of the position as set out by the applicant that: *E.ON agrees in principle to provide access to Killingholme Substation over land in its ownership. C.Gen remains committed to acquiring the necessary property interests by agreement and would welcome engagement from E.ON.*

However, the applicant's response to the EXA's third round of questions [REP-304] stated that: *C.GEN considers that it is unlikely that agreement will now be reached but expressed its willingness to carry on negotiating.*

Protective Provisions

Schedule 8 of the applicant's final draft DCO [APP-114] does not contain draft Protective Provisions for the protection of E.ON. The applicant's case, as quoted above, does not rely on the existence of these.

The Examiner's conclusions

The issues surrounding these plots are considered in detail in paras. 6.384 to 6.435 (Electricity Transmission Cables) in the main report, above. This recommends that the application for the CA of rights in respect of these plots should not be granted for the reasons given in that section.

Given that recommendation but solely in relation to the application for a s.127 Certificate, I note that the Relevant Representation from E.ON. spoke of possible negative impact and undue inconvenience but that it agrees in principle to provide access to Killingholme Substation over land in its ownership. E.ON. did not put forward a case that there would be serious detriment to its undertaking but talked of the need to direct the actual route of the cables.

Recommendation

Taking into account all the representations and evidence presented;

I recommend that, should the Secretary of State not accept the recommendation in para. 6.435 of the main report, the Secretary of State should be satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

In that circumstance, I recommend that the Secretary of State should issue a Certificate under s.127(5)(b) in respect E.ON UK Plc. in respect of plots 07/08, 07/09, 07/11, 09/02, and 09/05.

I therefore attach a draft Certificate and Notice to this Appendix.

In that circumstance, I recommend that the Secretary of State should consent to the inclusion of a provision in relation to s.138 in respect E.ON UK Plc. in respect of plots 07/08, 07/09, 07/11, 09/02, and 09/05.

HERON WIND LIMITED

OPTIMUS WIND LIMITED

The applicant made an undated application for certificates under s.127 and for consent to the inclusion of a provision under s.138 which was placed on the PINS website on 19 December 2013. The applicant made applications in respect of Heron Wind Ltd, Optimus Wind Ltd and SMart Wind Limited. SMart Wind Limited is not, in itself, a statutory undertaker but SMart Wind represented Heron Wind and Optimus Wind in a hearing to examine the s.127 applications submitted by the Applicant [HR-141].

Heron Wind Limited is a developer of Hornsea Offshore Wind Farms Project One and Optimus Wind Limited is a developer of Hornsea Offshore Wind Farms Project Two (the Hornsea Project Companies).

SMart Wind made a Relevant Representation [RR-025] dated 21 June 2013 which stated that:

On 20 February 2012, SMart Wind acquired an option to purchase the freehold of land at Killingholme Power Station, North Killingholme, Immingham (comprised within registered title HS358330) (the Land). This interest was registered, by way of a unilateral notice entered on the title registers for the Land maintained by the Land Registry, on 23 March 2012. The option was acquired over the whole of the Land to facilitate the development of Project One and Project Two and is held by SMart Wind in trust for Heron Wind Limited (Heron Wind) and Optimus Wind Limited (Optimus Wind).

The applications for certificates are considered jointly in this Appendix as they both refer to the acquisition of the same right in respect of the same plots.

The applications are in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04, 09/05. The revised Book of Reference states that the right to be acquired in respect of these plots is *to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of*

access to install and keep installed, maintain and operate the same

The applicant's case

The relevant s.127 applications [SEC-033 and SEC-038] state that in relation to s.127 and s.138:

For the purpose of the Application, it is C.GEN's case that:

there may be interference with (Heron) (Optimus) Wind's electrical connection to the Killingholme Substation;

the nature of the proposed works means that the Secretary of State can be confident that (Heron) (Optimus) Wind's rights, whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking;

C.GEN requires rights over land over which (Heron) (Optimus) Wind will have an option (plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05) in order to establish an Electrical Grid Connection in relation to the Project;

The Statutory Undertakers' case

All the representations considered below have been made by SMart Wind Ltd acting as the agent for Heron Wind Ltd and Optimus Wind Ltd.

At the s.127 hearing on 12 February, SMart Wind referred the inspector to its written submissions of 7 and 24 January 2014 [HR-141].

The issues surrounding these plots, including those submissions, are considered in detail in paras. 6.384 to 6.435 (Electricity Transmission Cables) in the main report, above. This recommends that the application for the CA of rights in respect of these plots should not be granted for the reasons given in that section.

Protective Provisions

Schedule 8 of the applicant's final draft DCO [APP-114] does contain draft Protective Provisions for the protection of 'Interfaces with Hornsea Project Companies' (Part 7).

In its paper of proposed amendments to the draft Development Consent Order dated 28 February 2014 [REP-315] the applicant had put forward these draft provisions and had included a commentary on them [REP-289]. This stated that:

The approach which C.GEN has adopted in drafting the protective provisions for the benefit of the Hornsea Project Companies is to seek to accommodate all three projects being promoted in the Killingholme area.

The applicant issued an undated *Response of C.GEN Killingholme Limited ("C.GEN") to the letter of Shepherd and Wedderburn on behalf of the Hornsea Project Companies* dated 28 February 2014 [AS-022] which also contained a Revised Draft of Protective Provisions for SMart Wind and which dealt with outstanding matters of difference on the amendments to the Hornsea Protective Provisions proposed by C.GEN.

An e-mail dated 10 March 2014 from Shepherd and Wedderburn LLP on behalf of the Hornsea Project Companies [AS-021], stated that:

... we have now had sight of the Paper of Amendments, PART 7 and the Commentary on Protective Provisions for the Hornsea Project Companies ... CGEN's PPs are fundamentally unacceptable to the Hornsea Project Companies both in spatial location and extent and in the application of the approvals mechanism.

That e-mail also stated that:

If the ExA is accepting CGEN's PPs into the examination ... we consider it premature to close the examination tomorrow without further consideration of the issues round the interface of the Hornsea Project Companies and the North Killingholme Project.

Consequently, SMart Wind wrote a letter dated 11 March 2014 [AS-023], the date of the programmed close of the Examination, requesting an extension to the Examination on the basis that, inter alia,

... we feel that this late submission by the Applicant of Protective Provisions is not within the spirit of the consultation process which the Planning Act procedure is designed to facilitate. The result is

that SMart Wind has been disadvantaged by not being given a fair hearing as to its concerns with the content of the draft Protective Provisions.

The Secretary of State for Energy and Climate Change considered this request for an extension and, in a letter dated 14 March 2014 [DEC-019] stated that he does not consider that there is sufficient cause to justify an extension in this case.

However, he requested SMart Wind and the Applicant to supply agreed Protective Provisions or, should they fail to come to agreement on Protective Provisions, a joint statement setting out the issues relating to the proposed Protective Provisions on which they agree. Additionally, any party may wish to make separate representations relating to the proposed Protective Provisions if, for example, there remain issues on which they disagree.

A number of representations and supporting information from both SMart Wind and the applicant were received and published on the website on 15 and 17 April 2014.

However, as these were received after the close of the Examination, these are designed to inform the Secretary of State's decision and not the s.127 Examiner's recommendation and have not been taken into account by the s.127 Examiner in reaching his recommendation.

The conclusions and recommendation below are, therefore, based on the fact that there were no agreed protective provisions relating to Heron and Optimus Wind at the close of the Examination.

The Examiner's conclusions

The issues surrounding these plots are considered in detail in paras. 6.384 to 6.435 (Electricity Transmission Cables) in the main report, above. The ExA recommend that the application for the CA of rights in respect of these plots should not be granted for the reasons given in that section.

Given that recommendation, but solely in relation to the application for a s.127 Certificate, I note that the relevant s.127 application relies on the 'the nature of the proposed works' to

provide assurance rather than on protective provisions. However, the applicant has put forward protective provisions in a paper of amendments to the draft DCO which the Hornsea Project Companies rejected as being fundamentally unacceptable.

I consider that, despite the fact that the existence of Protective Provisions does not form part of the applicant's case in respect of these two statutory undertakers, an agreed set of such provisions would have been useful in helping me to decide whether or not there was serious detriment.

With reference to the nature of the works, first, I note that the works in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05 do not form part of the application for Development Consent and that, as discussed in paras. 6.279 to 6.292 of the report, their extent is not yet fixed.

Second, the discussion on the grid connection on section 6, above, of this report shows that SMart Wind consider that the request for CA in respect of plots in which Heron and Optimus Wind have an interest would impinge on the delivery of Hornsea Projects 1 and 2. The overall position of these parties, as expressed by SMart Wind acting as their agent [REP-030], is that:

The C.GEN Order as proposed would, if granted, create a position of conflict and uncertainty in relation to Project One and Project Two which, if left unaddressed, will threaten the delivery of both projects

Recommendation

Taking into account all the representations and evidence presented;

In relation to s.127, I conclude that, without the certainty that Protective Provisions have been agreed between the applicant and Heron Wind and Optimus Wind and taking into account the applicant's reliance on the nature of the works, which remains to be finally defined, the Secretary of State could not be satisfied that the right could be purchased compulsorily without serious detriment to the carrying on of Heron Wind and Optimus Wind's undertaking.

I cannot recommend therefore that the Secretary of State should issue a Certificate under s.127(5)(b) in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05 held by Heron Wind and Optimus Wind.

In relation to Section 138, I cannot recommend that, without the certainty that Protective Provisions have been agreed between the applicant and Heron Wind and Optimus Wind and taking into account the applicant's reliance on the nature of the works, which remains to be finally defined, the Secretary of State should consent to the inclusion of Article 27 in respect of plots 07/08, 07/09, 07/11, 09/02, 09/04 and 09/05 held by Heron Wind and Optimus Wind.

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

The applicant made an undated application for certificates under s.127 and for consent to the inclusion of a provision under s.138 in respect of National Grid Electricity Transmission Plc. which was placed on the PINS website on 19 December 2013.

In its response to the ExA second round of written questions [REP-226] National Grid Gas confirmed that National Grid Electricity Transmission Plc. is a statutory undertaker for the purposes of s.127 and that the interests referenced in the application for a s.127 certificate have been acquired for the purposes of NG's undertaking and are used or held for those purposes. It also confirms that s.138 also applies in respect of NG's rights and interests subsisting over the Order land.

The applications are in respect of plots 09/02, 09/04 and 09/05.

The revised Book of Reference [APP-109] states that the right to be acquired in respect of plots 09/02, 09/04, and 09/05 is *to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same*

The applicant's case

The relevant s.127 application [SEC-035] states that in relation to s.127 and s.138:

For the purpose of the Application, it is C.GEN's case that:

11.1.1 there may be interference with NGET's rights during the construction, operation and maintenance of the Electrical Grid Connection. Such interference may include, but is not limited to works being undertaken in close proximity to high voltage overhead electricity lines adjacent to Killingholme Substation;

11.1.2 the nature of the proposed works and the inclusion of protective measures in the Proposed Order means that the Secretary of State can be confident that NGET's land and rights,

whilst subject to interference, will not be affected to the detriment of its ability to carry out its undertaking;

11.1.3 C.GEN requires rights relating to the establishment, operation and maintenance of an Electrical Grid Connection which will affect NGET land and rights comprised in plots 09/02, 09/04 and 09/05; and

11.1.4 protective provisions appropriate for NGET's undertaking are proposed to be inserted in the Proposed Order.

The Statutory Undertaker's Case

In its response to the ExA's second questions [REP-226], National Grid stated that:

Serious detriment would result to NG's carry out its undertaking as it could not comply with [its] duties without adequate access to and protection of its apparatus. In the case of the high pressure gas pipelines and above-ground installations in the operations area of the development there would be also be a serious risk to the safety of property and persons if the Applicant has unfettered powers to acquire land and develop in close proximity to NG apparatus without reference to NG, as is sought.

Protective Provisions

Part 3 of Schedule 8 of the applicant's final draft DCO [APP-114] does contain draft Protective Provisions for the protection of National Grid. At that time, these Protective Provisions were not agreed between the parties.

In its response to the ExA's second questions [REP-226], National Grid stated that:

the Order as drafted allows the Applicant to acquire any interests it sees fit, without any requirement for the replacement of permanent easements and rights of access to retained apparatus which are currently enjoyed for operational purposes and are vital to the carrying out of NG's undertaking.

These powers were insulated against by the terms of article 33 of NG's standard protective provisions, which require that it consent to any exercise of compulsory purchase powers over its interests.

However the draft Order as at the date of these representations has this paragraph deleted.

The Appendices to the applicant's response to the third round of questions [REP-305] contains an exchange between DLA Piper, on behalf of the applicant, and National Grid. National Grid has confirmed through an e-mail dated 3 March 2014 from Eversheds on behalf of National Grid that it confirms that the position set out in DLA Piper's letter of 28 February 2014 is an accurate representation of the state of negotiations between our clients.

The letter of 28 February 2014 stated that:

C.Gen's understanding is that the relationship including in relation to land between C.Gen and National Grid will principally be governed by protective provisions. Negotiation of the protective provisions is at an advanced stage and it is C.Gen's objective that the protective provisions will be agreed by the close of the examination on 11 March 2014.

and that:

C.GEN is working with National Grid Electricity Transmission PLC and National Grid Gas PLC to enable their withdrawal of the S.127 and S.138 applications

It is worth recording that these parties submitted a joint statement by C.GEN, National Grid Gas plc. & National Grid Electricity Transmission plc. ("National Grid") in relation to the current position between the parties at 17.49 on the day the Examination closed (11 March 2014) [AS-020]. This stated that:

C.GEN and National Grid have engaged constructively in relation to a number of matters relating to the interface of C.GEN's project with National Grid's land and apparatus. The two parties are engaged in documenting the outcome of their discussions. This has resulted in agreed protective provisions for the benefit of National Grid which have been included in the final DCO.

C.GEN and National Grid do not anticipate completing the remaining agreements required to resolve these interfaces prior to the close of examination today. However, both confirm that they

are continuing discussions and will report the position when agreement is achieved.

Whilst the parties understand that the matter may not be taken into account by the Examining Authority, agreement would allow National Grid's representations and s127 applications to be withdrawn. This, and the parties' statement would be available to the Secretary of State in considering the application.

The Examiner's conclusions

The issues surrounding these plots are considered in detail in paras. 6.384 to 6.435 (Electricity Transmission Cables) in the main report, above. The ExA recommends that the application for the CA of rights in respect of these plots should not be granted for the reasons given in that section.

In respect of the s.127 application, the s.127 Examiner notes that no notification was received before the close of the Examination that Protective Provisions had been agreed between the parties or that the application had been withdrawn.

Recommendation

Taking into account all the representations and evidence presented;

In relation to s.127, I conclude that, without the certainty that Protective Provisions have been agreed between the applicant and National Grid Electricity Transmission Plc., the Secretary of State could not be satisfied that the right could be purchased compulsorily without serious detriment to the carrying on of National Grid Electricity Transmission Plc's undertaking.

I cannot recommend therefore that the Secretary of State should issue a Certificate under s.127(5)(b) in respect of plots 09/02, 09/04 and 09/05 held by National Grid Electricity Transmission Plc.

In relation to s.138, I cannot recommend that, without the certainty that Protective Provisions have been agreed between the applicant and National Grid Electricity Transmission Plc., the Secretary of State should consent to the inclusion of Article 27 in respect of plots 09/02, 09/04 and 09/05 held by National Grid Electricity Transmission Plc.

NATIONAL GRID GAS PLC

The applicant made an undated application for certificates under s.127 and for consent to the inclusion of a provision under s.138 in respect of National Grid Gas plc. which was placed on the PINS website on 19 December 2013.

In its response to the ExA second round of written questions [REP-226] National Grid Gas confirmed that National Grid Gas Plc. is a statutory undertaker for the purposes of s.127 and that the interests referenced in the application for a s.127 certificate have been acquired for the purposes of NG's undertaking and are used or held for those purposes. It also confirms that s.138 also applies in respect of NG's rights and interests subsisting over the Order land.

The applications were in respect of plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 07/08, 07/09, 07/11, 08/01, 08/02 08/03, 09/02, 09/03 and 09/05.

However, the Certificate [SEC-060] and Notice [SEC-068] provided by the applicant were in respect of plots 04/10, 05/01, 05/03, 07/08, 07/09, 07/11, 08/01, 08/02 08/03, 09/02, and 09/05. I deal, therefore, solely with these plots.

Further, the application applied for a certificate in relation to land to be acquired in respect of plots 05/04, 05/05, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03. As the Certificate and Notice do not refer to 'land to be acquired', I do not deal with this in this section of the Appendix.

The revised Book of Reference [APP-109] states that the right to be acquired in respect of plots 04/10, 05/01, 05/03 is *to install and keep installed, maintain, and operate gas supply pipes to connect to a high pressure gas supply for the supply of natural gas required for or otherwise facilitating/ incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.*

The Applicant's Case

As stated above, I note that the s.127 application in respect of National Grid Gas Ltd. [SEC-035] does not include plots 04/10, 05/01 or 05/03 and, therefore, it does not make a case in respect of these plots.

The relevant s.127 application [SEC-035] states that, in relation to s.127 and s.138:

For the purpose of the Application, it is C.GEN's case that:

1.1.1 The acquisition of land and the creation of new rights in favour of C.GEN pursuant to the application for development consent could affect NGG's undertaking as it has infrastructure which may be affected by the Project, which includes but is not limited to: gas transmission pipelines (including a redundant gas transmission pipeline) located to the west of the Operations Area, gas distribution pipelines located along the disused railway as well as in the Operations Area and Above Ground Installations also located on the Operations Area, within plots 07/04 and 07/05 together with pipelines and apparatus within the Operations Area;

11.1.1 C.GEN is seeking to acquire the land comprised within plots 05/04, 05/05 and 06/01 in order to construct railway siding and associated infrastructure. Other NGG land or rights, such as is contained in plots 07/08, 07/09 will be affected by the creation of new rights relating to the establishment operation and maintenance of the Gas Connection and Electrical Grid Connection and plots 07/11, 09/02, 09/03 and 09/05 which relate to the Grid Connection only. Other land (comprising plots 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03) will be affected by the construction and operation of a combined cycle plant, gasification facility, flare stacks and associated infrastructure and the construction of a pipe conveyor to transport solid fuel; and

11.1.2 NGG has made relevant representations in relation to the Project and indicated that it will require appropriate protection for retained apparatus including compliance with relevant standards for works proposed within close proximity to gas apparatus. Protective provisions appropriate for NGG's undertaking are proposed to be inserted in the Proposed Order.

The s.127 Examiner notes that the revised Book of Reference [APP-109] no longer seeks to apply for rights in relation to the Gas Connection in respect of plots 07/08 and 07/09.

The Statutory Undertaker's Case

In its response to the ExA's second questions [REP-226], National Grid stated that:

Serious detriment would result to NG's carry out its undertaking as it could not comply with [its] duties without adequate access to and protection of its apparatus. In the case of the high pressure gas pipelines and above-ground installations in the operations area of the development there would be also be a serious risk to the safety of property and persons if the Applicant has unfettered powers to acquire land and develop in close proximity to NG apparatus without reference to NG, as is sought.

Protective Provisions

In its response to the ExA's second questions [REP-226], National Grid stated that:

the Order as drafted allows the Applicant to acquire any interests it sees fit, without any requirement for the replacement of permanent easements and rights of access to retained apparatus which are currently enjoyed for operational purposes and are vital to the carrying out of NG's undertaking.

These powers were insulated against by the terms of article 33 of NG's standard protective provisions, which require that it consent to any exercise of compulsory purchase powers over its interests. However the draft Order as at the date of these representations has this paragraph deleted.

Part 3 of Schedule 8 of the final draft DCO [APP-107] does contain draft Protective Provisions for the protection of National Grid.

The Appendices to the applicant's response to the third round of questions [REP-305] contains an exchange between DLA Piper, on behalf of the applicant, and National Grid. National Grid has confirmed through an e-mail dated 3 March 2014 from Eversheds on behalf of National Grid that it confirms that the position set out in DLA Piper's letter of 28 February 2014 is an accurate representation of the state of negotiations between our clients.

The letter of 28 February 2014 stated that:

C.Gen's understanding is that the relationship including in relation to land between C.Gen and National Grid will principally be governed by protective provisions. Negotiation of the protective provisions is at an advanced stage and it is C.Gen's objective that the protective provisions will be agreed by the close of the examination on 11 March 2014.

and that

C.GEN is working with National Grid Electricity Transmission PLC and National Grid Gas PLC to enable their withdrawal of the S.127 and S.138 applications

The s.127 Examiner notes that no notification was received before the close of the Examination that Protective Provisions had been agreed between the parties or that the application had been withdrawn.

I also note, however, that the applicant's response to the third round of questions [REP-226] states that

Amendments to the protective provisions have now been agreed with National Grid Gas PLC and National Grid Electricity Transmission PLC. The agreed protective provisions are attached at Appendix 6.

These were not, however, provided and elsewhere in the same response the applicant stated that:

The position of National Grid in relation to replacement apparatus is addressed by protective provisions contained in the Order, more particularly Paragraph 30 of Part 3 to Schedule 8. Further amendments to the protective provisions may be agreed between the parties.

The Examiner's conclusions

The case for the applicant, quoted above, relies on the existence of agreed Protective Provisions. I have not received an unequivocal agreed statement from National Grid Gas PLC and the applicant that Protective Provisions have been agreed.

Recommendation

_____ Taking into account all the evidence presented; _____

In relation to s.127, I conclude that, without the certainty that Protective Provisions have been agreed between the applicant and National Grid Gas Plc., the Secretary of State could not be satisfied that the right could be purchased compulsorily without serious detriment to the carrying on of National Grid Gas Plc's undertaking.

I cannot recommend therefore that the Secretary of State should issue a Certificate under s.127(5)(b) in respect of plots 04/10, 05/01, 05/03, 07/08, 07/09, 07/11, 08/01, 08/02 08/03, 09/02, and 09/05 held by National Grid Gas Plc.

In relation to Section 138, I cannot recommend that, without the certainty that Protective Provisions have been agreed between the applicant and National Grid Gas Plc., the Secretary of State should consent to the inclusion of Article 27 in respect of plots 04/10, 05/01, 05/03, 07/08, 07/09, 07/11, 08/01, 08/02 08/03, 09/02, and 09/05 held by National Grid Gas Plc.

The North Killingholme (Generating Station) Order 201[X]
The Planning Act 2008
Certificate under Section 127(5)(b)

1. The North Killingholme (Generating Station) Order 201[X] which has been submitted by C.GEN Killingholme Limited to the Secretary of State include the land described in the schedule.
2. The land was acquired by the statutory undertaker (E.ON UK Gas Limited) for the purpose of its undertaking and the Secretary of State is satisfied that it is used for the purposes of the carrying out of its undertaking.
3. The Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 certifies that the land described in the schedule can be purchased and not replaced without serious detriment to the carrying on of the undertaking.

SCHEDULE

Plot No. 07/08	A right over 40440.74 square metres of land comprising arable land, grassland, drains, trees, thickets and public footpath (No. 77), north west of Haven Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 07/09	A right over 3647.73 square metres of land comprising arable land, ditches and thickets, north of Centrica's Power station off Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from

	the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 07/11	A right over 4535.62 square metres of land comprising arable land, grassland, ditches, thickets, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 09/02	A right over 13138.89 square metres of land comprising arable land, grassland, ditches, drains, thickets, trees, pylons, private track, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 09/05	A right over 19231.35 square metres of land comprising grassland, trees, thickets, ditches, drains, public footpath (No. 86), pylons, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.

Date:

Department for Energy and Climate Change
The North Killingholme (Generating Station) Order 201[X]
The Planning Act 2008
Notice under Section 127(7)

1. The North Killingholme (Generating Station) Order which has been submitted by C.GEN Killingholme Limited to the Secretary of State includes the land described in the schedule.

2. This land was acquired by a statutory undertaker (E.ON UK Gas Limited) for the purpose of its undertaking and the Secretary of State is satisfied that the land is used for the purposes of the carrying out of its undertaking.

3. Notice is hereby given that the Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 has certified that the land described in the schedule can be purchased and not replaced without serious detriment to the carrying on of E.ON UK Gas Limited's undertaking.

4. Notice of authorisation of compulsory acquisition of the new rights is to be made by the prospective purchaser (C.GEN Killingholme Limited) in accordance with Section 134 of the Planning Act 2008.

SCHEDULE

Plot No. 07/08	A right over 40440.74 square metres of land comprising arable land, grassland, drains, trees, thickets and public footpath (No. 77), north west of Haven Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise
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	facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 07/09	A right over 3647.73 square metres of land comprising arable land, ditches and thickets, north of Centrica's Power station off Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 07/11	A right over 4535.62 square metres of land comprising arable land, grassland, ditches, thickets, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 09/02	A right over 13138.89 square metres of land comprising arable land, grassland, ditches, drains, thickets, trees, pylons, private track, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 09/05	A right over 19231.35 square metres of land comprising grassland, trees, thickets, ditches, drains, public footpath (No. 86), pylons, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to

	connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
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Date:

The North Killingholme (Generating Station) Order 201[X]
The Planning Act 2008
Certificate under Section 127(5)(b)

1. The North Killingholme (Generating Station) Order 201[X] which has been submitted by C.GEN Killingholme Limited to the Secretary of State include the land described in the schedule.

2. The land was acquired by the statutory undertaker (E.ON UK plc.) for the purpose of its undertaking and the Secretary of State is satisfied that it is used for the purposes of the carrying out of its undertaking.

3. The Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 certifies that the land described in the schedule can be purchased and not replaced without serious detriment to the carrying on of the undertaking.

SCHEDULE

Plot No. 07/08	A right over 40440.74 square metres of land comprising arable land, grassland, drains, trees, thickets and public footpath (No. 77), north west of Haven Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 07/09	A right over 3647.73 square metres of land comprising arable land, ditches and thickets, north of Centrica's Power station off Chase Hill Road, North Lincolnshire to install and

	keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 07/11	A right over 4535.62 square metres of land comprising arable land, grassland, ditches, thickets, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 09/02	A right over 13138.89 square metres of land comprising arable land, grassland, ditches, drains, thickets, trees, pylons, private track, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
Plot No. 09/04	A right over 585.10 square metres of land comprising grassland, thickets north of E.ON's power station, off Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.

Plot No. 09/05	A right over 19231.35 square metres of land comprising grassland, trees, thickets, ditches, drains, public footpath (No. 86), pylons, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
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Date:

Department for Energy and Climate Change
The North Killingholme (Generating Station) Order 201[X]
The Planning Act 2008
Notice under Section 127(7)

1. The North Killingholme (Generating Station) Order which has been submitted by C.GEN Killingholme Limited to the Secretary of State includes the land described in the schedule.

2. This land was acquired by a statutory undertaker (E.ON UK plc.) for the purpose of its undertaking and the Secretary of State is satisfied that the land is used for the purposes of the carrying out of its undertaking.

3. Notice is hereby given that the Secretary of State in exercise of his powers under section 127 of the Planning Act 2008 has certified that the land described in the schedule can be purchased and not replaced without serious detriment to the carrying on of E.ON UK plc's undertaking.

4. Notice of authorisation of compulsory acquisition of the new rights is to be made by the prospective purchaser (C.GEN Killingholme Limited) in accordance with Section 134 of the Planning Act 2008.

SCHEDULE

Plot No. 07/08	A right over 40440.74 square metres of land comprising arable land, grassland, drains, trees, thickets and public footpath (No. 77), north west of Haven Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise
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	facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.
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Plot No. 09/04	A right over 585.10 square metres of land comprising grassland, thickets north of E.ON's power station, off Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the

	<p>electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.</p>
<p>Plot No. 09/05</p>	<p>A right over 19231.35 square metres of land comprising grassland, trees, thickets, ditches, drains, public footpath (No. 86), pylons, north of Chase Hill Road, North Lincolnshire to install and keep installed, maintain, and operate electricity transmission cables to connect to the electricity grid for the transmission of electricity to and from the grid required for or otherwise facilitating/incidental to the authorised development and rights of access to install and keep installed, maintain and operate the same.</p>

Date: