North Killingholme Power Project

Non-Material Change to Development Consent Order

Application Document

C.GEN Killingholme Limited

C.GEN

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1 INTRODUCTION

1.1 BACKGROUND

In March 2013, C.GEN Killingholme Limited (the 'Applicant') submitted an application (the '2013 Application') for development consent for the North Killingholme Power Project (the 'Project').[1]

On 11 September 2014, the Secretary of State for Energy and Climate Change granted development consent by way of a Development Consent Order ('DCO') (SI 2014/2434) (which was subject to a correction order dated 26 October 2015 (SI 2015/1829)). Under the granted Order ('the Order'), the Applicant is authorised to construct and operate a new thermal generating station, generating up to 470 MW gross electrical output, with associated development, at North Killingholme, North Lincolnshire.

The Order authorises the operation of the Project in two modes: either as a Combined Cycle Gas Turbine ('CCGT') plant or as an Integrated Gasification Combined Cycle ('IGCC') plant. The CCGT plant would be fired on natural gas, obtained from existing high-pressure gas supply pipes in the area that cross the Applicant's land. When operating as an IGCC plant, the Project would be fuelled by coal, possibly blended with petroleum coke or biomass. The IGCC plant would include gasification equipment and include opportunities for carbon capture and storage, through transporting and storing captured carbon dioxide ('CO_2'). There is also opportunity for the Project to provide steam and / or hot water (combined heat and power ('CHP')) to local industry and homes.

The Application Site was described as comprising the Principal Project Area (108.2ha); the Electrical Grid Connection Land (92.9ha); and the Gas Connection Land (84.8ha). Since the Order was made, C.GEN has purchased and decommissioned the former Centrica Station ('Killingholme A' or 'KPS-A')). This change in land ownership means that access to the gas pipeline and substation is now available without the need for compulsory acquisition. The Gas Connection Land and Electrical Connection Land included in the original Order Limits are no longer required and the grid and gas connections will be delivered under permitted development rights or by applications for planning permission, as necessary. The Applicant has in place gas supply contracts and has secured the necessary Transmission Entry Capacity ('TEC') at the adjacent National Grid North Killingholme substation.

Since the Order has been made, the Applicant has been developing the Project for delivery, including appointing an EPC contractor and participating in the Capacity Market Auctions ('CMAs'). However, as a result of market conditions (see section 4.1 of this document for further details), the Applicant has not yet implemented the Order. The Applicant still intends to participate in a future CMA and wishes to implement the Order and construct and operate the Project. Given that requirement 2 of the Order states that the Authorised Development shall commence no later than the expiration of seven years beginning with the date that the Order came into force (i.e. 1 October 2021, as the Order came into force on 2 October 2014), the Applicant now wishes to apply for a non-material change to extend the timeframe by which the Authorised Development shall commence.

[1] Planning Inspectorate Reference: EN010038

The Applicant has notified both the Planning Inspectorate ('PINS') and the Department for Business, Energy and Industrial Strategy ('BEIS') of the intention to submit this application and has undertaken non-statutory pre-application engagement with key stakeholders, including:

- Environment Agency
- Natural England
- Highways England
- North Lincolnshire Council (Planning)
- North Lincolnshire Council (Highways)
- North Lincolnshire Council (Environmental Health Officer)
- North Lincolnshire Council (Ecologist)
- North East Lincolnshire Council (Highways)
- Marine Management Organisation ('MMO')
- Humber Nature Partnership
- Royal Society for the Protection of Birds ('RSPB')
- Lincolnshire Wildlife Trust

The feedback received from these stakeholders is summarised in the respective topic chapters in the Environmental Report. No objections in principle were raised by any of these stakeholders.

This application is made pursuant to Schedule 6 of the Planning Act 2008 (as amended) (the 'PA2008') and Regulation 4 of The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended in 2015) (the '2011 Regulations') to the Secretary of State for BEIS.

1.2 PURPOSE AND STRUCTURE OF THIS DOCUMENT

The purpose of this document is to set out the planning case for the non-material change application. It should be read in conjunction with the Environmental Report that has been submitted with the application, which considers changes since the DCO was granted, including the baseline environment, policy and guidance, necessary mitigation and likely environmental impacts.

This document is structured as follows:

- Section 2 sets out the regulatory framework under which non-material change applications can be made to DCOs;
- Section 3 provides a brief overview of the structure of the Order as made in 2014 and the Articles and Schedules that are subject to proposed changes;
- Section 4 sets out the proposed amendments to the Order, including background information as to why these changes are considered to be necessary;

- Section 5 provides an analysis of why the proposed changes are considered to be non-material;

- Section 6 provides the conclusion of this document.

1.3 STRUCTURE OF THE APPLICATION

The application as a whole comprises the following documents:

- Covering letter;

- Application Document;

- Environmental Report including Appendices 4.1 to 9.2;

- Updated Carbon Capture Readiness Feasibility Study / Carbon Capture and Storage Design Concept Report (originally submitted with the 2013 Application – document reference 8.4 dated 22 March 2013);

- Updated Carbon Capture Readiness Feasibility Study / Carbon Capture and Storage Design Concept Report – Non-Technical Summary;

- Updated Works Plan (originally submitted with the 2013 Application – sheet nos. 2.12, 2.13 and 2.14 dated 20 March 2013);

- Draft amendment Order, by way of draft Statutory Instrument;

- A copy of the email confirming successful S.I. validation of the draft amendment Order;

- A copy of the Notice required under Regulation 6 of the 2011 Regulations, published for two consecutive weeks in the Hull Daily Mail, the Scunthorpe Telegraph and the Grimsby Telegraph (the Regulation 7A Consultation and Publicity Statement will follow after the publication of the second Regulation 6 notice);

- Application fee as required by Regulation 5 of the 2011 Regulations.

Regulation 4(2) of the 2011 Regulations requires that an application for a non-material change to a DCO must be made in writing and must contain a number of details or documents. The following table sets out where in the submission the requirements of Regulation 4(2) are met:

Table 1 – Regulation 4(2) Requirements

Regulation	Requirement	Location in the submission
4(2)(a)	the name and address of the applicant;	Cover letter
4(2)(b)	the name and address of an agent, if appointed;	Cover letter
4(2)(c)	the Secretary of State's reference for the development consent order to which the application relates;	Cover letter and Section 1.1 of this document
4(2)(d)	details of the change being applied for;	Sections 4.1 and 4.2 of this document
4(2)(e)	any documents and plans considered necessary to support the application;	Documents listed in section 1.3 above
4(2)(f)	a statement that the applicant is either— (i) the person who applied for the development consent order to which the application relates or a successor in title; (ii) a person with an interest in the land to which the development consent order relates; or (iii) any other person for whose benefit the development consent order has effect;	Section 1.1 of this document confirms that the Applicant in respect of this application is C.GEN Killingholme Limited (being the same applicant as for the existing Order). C.GEN Killingholme Limited is also the owner of the site, and the beneficiary of the Order, as the 'undertaker'
4(2)(ff)	the consultation and publicity statement referred to in regulation 7A;	The consultation and publicity statement will follow after the publication of the second Regulation 6 notice
4(2)(g)	details of the applicant's interest in the land; and	Section 5 of this document confirms that C.GEN Killingholme Limited is the owner of the land to which this application relates
4(2)(h)	if requested by the Secretary of State, 3 paper copies of the application and other supporting documents and plans.	No paper copies have been requested by either PINS or the Department for BEIS

2 REGULATORY FRAMEWORK

2.1 AMENDMENTS TO DEVELOPMENT CONSENT ORDERS PURSUANT TO THE PLANNING ACT 2008

The ability to amend an Order is contained in Schedule 6 of the PA2008. It encompasses two different procedures, for non-material changes, and material changes. They have differing procedural and programme implications.

Under Paragraph 2(2) of Schedule 6 of the PA2008, the Secretary of State *"must have regard to the effect of the change, together with any previous changes made under this paragraph, on the development consent order as originally made"* in deciding whether a change is material.

2.2 THE INFRASTRUCTURE PLANNING (CHANGES TO, AND REVOCATION OF, DEVELOPMENT CONSENT ORDERS) REGULATIONS 2011

The 2011 Regulations set out how applications to change or revoke a DCO are to be made, as well as the requirements for consulting on and publicising an application, and the procedures for examining (where relevant) and deciding an application. Part 1 of the 2011 Regulations relates to non-material changes, and Part 2 relates to material changes.

2.3 DCLG GUIDANCE

There is no statutory definition of what constitutes a material change under either the PA2008 or the 2011 Regulations. The Government's December 2015 "Guidance on Changes to Development Consent Orders" (the 'DCLG Guidance') makes it clear that such decisions will inevitably depend on the circumstances of a specific case. However, the DCLG Guidance sets out four examples of characteristics which indicate that a change is more likely to be treated as a material (albeit the guidance goes on to note that this is just a starting point):

- the change requires an updated Environmental Statement ('ES');
- the change invokes a need for a Habitats Regulations Assessment ('HRA') or requires a new or additional European Protected Species licence;
- the change seeks to authorise compulsory acquisition not already authorised in the extant DCO;
- the change has a material impact on businesses and residents.

Section 5 of this document assesses the proposed changes to the Order against the above characteristics and sets out why the proposed changes are considered to be non-material.

2.4 CONSULTATION REQUIREMENTS

Regulation 7 of the 2011 Regulations sets out the requirements for statutory consultation for non-material change applications:

Duty to consult

7.—

(1) The applicant must consult the persons specified in paragraph (2) about the application by sending them a copy of the notice referred to in regulation 6.

(2) Subject to paragraph (3), the persons to be consulted are—

> *(a) each person for whose benefit the development consent order, to which the application relates, has effect;*
>
> *(b) each person that was, in accordance with section 56, notified of the application for the development consent order which is the subject of the application; and*

(c) any other person who may be directly affected by the changes proposed in the application.

(3) The applicant need not consult a person or authority specified above if they have obtained the written consent of the Secretary of State.

(4) If the Secretary of State exercises its discretion under paragraph (3) it must publish its reasons for doing so on its website.

(5) The Secretary of State must make available in accordance with regulation 46 all responses to the publicity and consultation.

Following a review of the original consultee list and the initial engagement with the stakeholders listed in section 1 of this document, the Applicant prepared a list of consultees that it considered relevant for the purpose of statutory consultation upon submission of the non-material change application. The Applicant submitted this list to the Secretary of State for BEIS on 3 June 2020, pursuant to Regulation 7(3) of the 2011 Regulations, seeking agreement that not all persons prescribed in Regulation 7(2) needed to be consulted in relation to this non-material change. Upon request from BEIS, the Applicant re-submitted the list in an amended format on 17 June 2020. The Secretary of State provided written consent to the proposed consultee list on 22 June 2020.

The Regulation 6 notice is being published for two consecutive weeks in the local newspapers (the Hull Daily Mail, the Scunthorpe Telegraph and the Grimsby Telegraph), with the publication of the first notice being on the date on which this application is made. A copy of the Regulation 6 notice has been sent to all those persons required to be consulted as agreed with the Secretary of State pursuant to Regulation 7(3).

The NMC Application is available to view on the project website and also on the Planning Inspectorate's website:

www.cgenpower.com/kgh/kgh_planning_consultation.html

https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/north-killingholme-power-project/

The application documents will be available for inspection online on the above websites throughout the duration of the consultation, which ends on Friday, 25 September 2020.

Currently, it is not possible to make hard copies available in public deposit locations. However, if the restrictions imposed by The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended) are lifted before Friday, 25 September 2020, and if reasonably practicable and safe to do so, the Applicant will endeavour to make hard copies of the application documents available for public inspection at the libraries listed in the Regulation 6 notice. This is subject to the libraries being opened.

The Applicant will also provide hard copies of the NMC Application documents free of charge on request via contact@cgenpower.com

Consultees have been informed that they should provide any comments on the NMC Application to PINS by no later than the closing date for consultation, 25 September 2020. As requested by PINS, the Applicant has advised consultees to submit responses electronically to NorthKillingholme@planninginspectorate.gov.uk, or may send responses by post to National Infrastructure, The Planning Inspectorate, Temple Quay House, 2 The Square, Bristol, BS1 6PN .

In accordance with Regulation 7A of the 2011 Regulations, a Consultation and Publicity Statement will be submitted after the publication of the second Regulation 6 notice, explaining how the Applicant has complied with the requirements of Regulation 6 and Regulation 7. The Regulation 7A Consultation and Publicity Statement will contain copies of the Regulation 6 notice and the Secretary of State's written consent under Regulation 7(3).

3 THE NORTH KILLINGHOLME (GENERATING STATION) ORDER 2014

This section briefly sets out the structure of the Order as made[2] (and amended by a Correction Order[3]).

The Order consists of 37 operative provisions (Articles) and eight Schedules.

Part 1 of Schedule 1 describes the Authorised Development, consisting of Work Nos. 1 to 8. These works correlate with the Works Plans. Work No. 1 is the CCGT plant, and Work No. 2 is the gasification plant. Schedule 1, Part 2, contains the consented building heights, and Part 3 sets out the 52 Requirements to be complied with and discharged.

Schedules 2 to 4 set out the streets subject to street works, streets to be temporarily stopped up, and access to works.

Schedule 5 sets out the land of which temporary possession may be taken.

Schedule 6 sets out the procedure for discharging requirements in Schedule 1 Part 3.

Schedule 7 contains the deemed marine licence.

Schedule 8 contains protective provisions.

The following Articles and Schedule are subject to proposed amendments, as set out in more detail in section 4 below:

- Article 2 (Interpretation)
- Article 34 (Certification of plans, etc.)
- Part 3 (Requirements) of Schedule 1 (Authorised development)

4 PROPOSED AMENDMENTS TO THE ORDER

The Applicant is seeking consent for two non-material changes to the Order:

(i) An extension of the time by which the Order must be implemented; and

(ii) Ancillary changes to the Project's provision of carbon capture readiness ('CCR') measures.

These are explained in the following sections.

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2 S.I. 2014/2434

3 S.I. 2015/1829

4.1 REQUIREMENT 2 – TIME LIMITS ETC.

Requirement 2 of the Order as made states;

The authorised development shall commence no later than the expiration of seven years beginning with the date that this Order comes into force.

Hence the Applicant would need to implement by 1 October 2021.

This application proposes to amend this wording as follows (in bold):

*The authorised development shall commence no later than the expiration of **twelve** years beginning with the date that this Order comes into force.*

Hence this application would allow the Applicant a further period of 5 years to implement the consent, expiring in October 2026.

The CCGT element of the Project is build-ready, subject to detailed design and discharge of pre-commencement requirements. The necessary planning consents are in place and the Environmental Permit has been granted. The Project has secured a supply of natural gas, and the necessary TEC on the nearby substation. The Applicant tendered a full turnkey EPC contract for the Project in 2017 and has selected a preferred OEM contractor.

In order to support the delivery of electricity generation for future energy needs, the Government operates (via National Grid) an electricity capacity market auction ('CMA'). Under the CMA, energy producers are awarded contracts to make available energy supply capacity in return for a subsidy payment. Larger new build projects (such as the Project) are eligible to compete in the annual T-4 CMA. If they are successful, they are awarded 15-year contracts on condition that they are available to supply capacity in the fourth year following the auction. This model enables funding of larger generating plants and allows sufficient time to construct and commission these plants, from the date when the funding arrangements are secured.

The programme for implementation, construction and commissioning of the Project following successful participation in the CMA involves several key stages that are typical (in terms of steps and duration) for the delivery of larger scale energy projects. This would include period of six to 12 months to put in place project financing and conclude an EPC contract. Following that, detailed design and discharge of pre-commencement conditions would typically take 12-18 months, including the necessary surveys such as detailed ground investigations and consequential engineering design, for example. The construction process itself would take approximately 28-36 months.

The advanced status of the Project has enabled C.GEN to prequalify for the 2018, 2019 (subsequently cancelled) and 2020 T-4 Capacity Market auctions. However, the capacity price in each of these auctions has not reflected the capital expenditure requirements for larger new build projects. This is a result of factors relating to existing capacity in the sector, including the continued operation of coal-fired power stations and older CCGT facilities. Coal plants are now planned to be phased out by October 2024, and older nuclear and CCGT plants are due to be retired. At this time, it is also the case that wider economic uncertainty, as a result of factors including COVID-19 and the future relationship of the UK and EU, are likely to continue to impact on the delivery of the Project. CMA capacity prices are expected to begin to improve in the medium term (2-3 years). If the conditions improve sufficiently within the period proposed for the extension, the Project could be delivered sooner.

However, it is expected that within a reasonable time horizon the increasing capacity deficit, alongside an improved economic outlook, will be reflected positively in CMA prices,

so that auctions will support the delivery of larger scale energy generation as part of the UK's diversified energy capacity needs.

The proposed extension would enable the Applicant to participate in CMAs over the period 2021-2023/24, and allow sufficient time for the pre-implementation steps to be concluded. It would also allow sufficient time for those pre-implementation steps, in the event that CMA prices improve or alternative funding models are feasible.

4.2 ANCILLARY CHANGES

Changes to the Carbon Capture Readiness Provisions

Whilst no changes are proposed to the Authorised Development itself (including the CCGT or IGCC facilities, which form part of the Authorised Development under Work Nos. 1 and 2a (as described in Part 1 of Schedule 1), the Applicant is seeking consent to update the Project's carbon capture readiness. The reasons for these changes are explained in the following sections and are proposed to be secured in this application by way of:

- the submission of an updated carbon capture feasibility study;
- the submission of an updated works plan; and
- amendments to the carbon capture Requirements in the Order.

This section provides a high level overview of each of the above three means of securing the carbon capture updates.

Updated Carbon Capture Feasibility Study

A Carbon Capture Readiness Feasibility Study / Carbon Capture and Storage Design Concept Report was submitted with the 2013 Application (dated 22 March 2013). This existing feasibility study relied on a pre-combustion carbon capture solution requiring construction of the gasification plant and subsequent operation as an IGCC power station.

At present, the IGCC mode of operation does not currently look feasible to deliver as it is dependent on development of a carbon transport and storage network by third parties (although this IGCC option does remain a viable technological solution to low-carbon energy production needs).

Therefore, since the Order also enables delivery/operation of the Project in CCGT mode (instead of in IGCC mode), the previous feasibility study has been updated to address a post-combustion carbon capture solution associated with the CCGT mode (in addition to the pre-combustion carbon capture solution associated with the IGCC mode). Accordingly, the updated feasibility study now addresses both pre-combustion carbon capture for IGCC and post-combustion carbon capture for CCGT.

This updated feasibility study is submitted with this application. The draft Statutory Instrument for the non-material changes to the Order includes appropriate amendments to reflect the subsequent certification of this updated feasibility study.

A non-technical summary of the updated feasibility study is also submitted with this application.

Updated Works Plan

The existing works plans with Document Reference Nos 2.12, 2.13 and 2.14 refer to Work No. 2a (the gasification facility) – and, therefore, include reference to the pre-combustion

carbon capture solution requiring construction of the gasification plant and subsequent operation as an IGCC power station.

Since the updated feasibility study now addresses the post-combustion carbon capture solution associated with the CCGT mode, these existing works plans with Document Reference Nos 2.12, 2.13 and 2.14 have been amalgamated (into one composite works plan) and updated to include reference to an appropriately sized area (2.3 ha) for the post-combustion carbon capture plant (the updated feasibility study determines that an area of 2.25 ha is required – this has been rounded up conservatively to 2.3 ha).

This area is split over two Work Nos. – the majority is within Work No. 2b, with a smaller portion within part of Work No. 2a. No conflict is caused by locating the area for the post-combustion carbon capture plant within the pre-combustion IGCC plant areas of Work No. 2a and Work No. 2b because, if one solution develops, the other solution becomes redundant. Accordingly, the updated works plan now includes reference to both pre-combustion carbon capture for IGCC and post-combustion carbon capture for CCGT.

This updated works plan is submitted with this application. The draft Statutory Instrument for the non-material changes to the Order includes appropriate language for the subsequent certification of this updated works plan.

Amendments to the Carbon Capture Requirements in the Order

The existing Requirements associated with carbon capture in the Order (at Requirements 1, 36, 37 and 38) reflect the pre-combustion carbon capture solution requiring construction of the gasification plant and subsequent operation as an IGCC power station.

Since the updated feasibility study now also addresses the post-combustion carbon capture solution associated with the CCGT mode, the existing Requirements have been updated to take this into account (and to reflect more recent drafting style in respect of carbon capture Requirements in DCOs – e.g. regarding monitoring reports).

In the proposed drafting of the Requirements, references are now made to both the "pre-combustion CCS proposal" and the "post-combustion CCS proposal" (both defined using the updated feasibility study) – with appropriate consequential amendments tracked through (e.g. regarding the definition of "target carbon dioxide"). In addition, appropriate amendments are proposed to the language associated with the "designated site" (defined using the updated works plan) to ensure the protection of the area for the post-combustion carbon capture plant. It should be noted that, in the event that a post-combustion carbon capture plant solution is required to be installed, planning permission for carbon capture plant will need to be obtained. Nonetheless, the land required for that plant will have been protected so that carbon capture equipment is capable of being installed. The proposed amendments to the DCO Requirements will simply protect this area of land were that equipment to be required.

Work No. 2a relates to the IGCC element of the Project, including carbon capture. Although this application proposes that the land reserved for carbon capture would now relate to the post-combustion solution, carbon capture is integral to the IGCC element and, should the IGCC element be constructed, would be located within the area of Work No. 2a. Requirement 38 continues to expressly prohibit the operation of Work No. 1 using syngas (unless generated entirely from biomass) from Work No. 2a except with the consent of the Secretary of State, and the installation of pre-combustion carbon capture plant.

The Applicant considers that the updated provisions relating to CCR provision for the Project present an improvement to the current CCR provision for the Project, in that they secure CCR for CCGT-only operation of the Project in the event that the IGCC is not developed. This is important in the context of continued uncertainty about the feasibility

of carbon transport networks. This does not affect the Applicant's ability to deliver the IGCC element of the Project, at which time the plant would operate on a pre-combustion model. It simply means that the CCGT element of the Project is not reliant on the IGCC plant in order to meet current CCR requirements.

For further information on the updates to the existing carbon capture Requirements language, please refer to Appendix 1 to this document – which contains the proposed substitute/new definitions for Requirement 1 and the proposed consolidated amended wording for Requirements 36, 37 and 38.

5 NON-MATERIALITY OF THE PROPOSED AMENDMENTS

As set out above, the DCLG Guidance on amendments to DCOs covers the types of changes to a DCO and the procedures to make such changes; it was produced subsequent to the implementation of the Infrastructure Act 2015 (which amended the PA2008), and the 2011 Regulations.

Based on the DCLG Guidance, the Applicant has considered the proposed changes to the DCO to assess if they would:

- require an updated ES;
- invoke a need for a HRA or require a new or additional European Protected Species licence;
- authorise compulsory acquisition not already authorised in the extant DCO;
- have a material impact on businesses and residents.

These matters are considered below.

Environmental Statement

Paragraph 12 of the DCLG Guidance states that

> *"[a] change should be treated as material if it would require an updated Environmental Statement (from that at the time the original Development Consent Order was made) to take account of new, or materially different, likely significant effects on the environment"*.

The 2013 Application was accompanied by an ES (document references 6.1 – 6.4).

No physical changes are proposed to the consented Project, so the potential for new or materially different effects is low. However, the Applicant has considered the potential for changes to the baseline environment to affect the conclusions of the ES. The conclusions of this assessment are set out in section 9 of the Environmental Report. The proposed amendments to the works plans and carbon capture requirements in the Order will simply protect an area of land were a post-combustion carbon capture plant solution to be pursued. This is not considered to have any implications in respect of the findings of the original ES.

In summary, following a screening exercise, an assessment of potential changes to likely significant effects was carried out. This included consultation with key stakeholders. The assessment concluded that no changes are expected to the significance of environmental effects described in the ES. Accordingly, an ES is not required to support the application.

Habitats and Protected Species

Paragraph 14 of the DCLG Guidance states that

> *"[a] change to a Development Consent Order is likely to be material if it would invoke a need for a Habitats Regulations Assessment. Similarly, the need for a new or additional licence in respect of European Protected Species is also likely to be indicative of a material change. Applicants should consider discussing the need for a Habitats Regulations Assessment or a protected species licence with the appropriate statutory nature conservation body before any application for a change is prepared."*

A Report to Inform Habitats Regulations Assessment was submitted with the 2013 Application (document reference 5.5). As explained above, no physical changes are proposed to the consented Project; therefore, the potential for new or materially different effects is considered to be low. However, the Applicant has considered the potential for changes to the baseline environment to affect the conclusions of the HRA or the need for new or additional European Protected Species licences.

A consideration in examining the extant Order was the potential impact of the generating station during construction and operation on the Humber Estuary Special Area of Conservation ('SAC'), Special Protection Area ('SPA') and Ramsar site.

The Applicant has undertaken a full year of updated baseline surveys to establish any changes to the environmental baseline. The results of these surveys are presented in section 5 (Ecology and Biodiversity) and associated appendices of the Environmental Report, concluding that there have been no significant changes to the baseline conditions and that therefore this application does not invoke a need for a new HRA or result in the need to obtain a new or additional European Protected Species licence.

The proposed amendments to the works plans and carbon capture requirements in the Order are not considered to have any implications for the findings of the original HRA Report or the need for European Protected Species licences.

Therefore, in accordance with paragraph 14 of the DCLG Guidance, this application is considered to be non-material with regard to HRA and European Protected Species licences.

Compulsory Acquisition

Paragraph 15 of the DCLG Guidance states that

> *"[a] change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing Development Consent Order. This is because consideration of the need for compulsory acquisition must include a right for the person whose land or rights are being acquired to express their views at a hearing, and this is not provided for under the 2011 Regulations governing non-material changes (where there is no examination)."*

The Order, in Article 16, granted the Applicant the right to compulsorily acquire land within the Order Limits. The Applicant has not exercised these rights, and in accordance with Article 19, these rights expired on 1 October 2019. However, as the Applicant owns all the land within the Principal Project Area (which is the land to which this application relates), and has obtained or will obtain the necessary rights over adjacent land as necessary by negotiation, no powers of compulsory acquisition are required to implement the Project, and the Applicant does not seek an extension to, or the grant of new,

compulsory acquisition powers or other interests in or rights over land under this application.

Therefore, it is considered that the proposed application is not material in terms of compulsory acquisition and paragraph 15 of the DCLG Guidance.

Impact on Businesses and Residents

Paragraph 16 of the DCLG Guidance states that

> *"[t]he potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material. In some cases, these impacts may already have been identified, directly or indirectly, in terms of likely significant effects on the environment. But there may be other situations where this is not the case and where the impact of the change on local people and businesses will be sufficient to indicate that the change should be considered as material. Additional impacts that may be relevant to whether a particular change is material will be dependent on the circumstances of a particular case, but examples might include those relating to visual amenity from changes to the size or height of buildings; impacts on the natural or historic environment; and impacts arising from additional traffic."*

No physical changes are proposed to the consented Project, and the Environmental Report concludes that no new or materially different effects on the environment are likely. Therefore, it is considered that the potential for new or materially different effects on local people and businesses is low.

As a result, it is considered that the proposed application is non-material with regard to potential impacts on local people and businesses.

6 CONCLUSION

The Applicant considers that the proposed application, for a time extension to implement the Order, and the proposed ancillary changes, is non-material for the purposes of the 2011 Regulations because:

- there is no requirement for an updated Environmental Statement – the conclusions in the Environmental Statement remain valid for the proposed changes;
- there is no requirement for a new HRA or European Protected Species licence;
- no new compulsory acquisition powers are being sought; and
- the proposed changes would not have a material impact on local residents and businesses.

In addition, no significant issues have been raised by consultees.

Accordingly, the Applicant concludes that the proposed changes as outlined in section 4 of this document can and should be consented by the Secretary of State for BEIS as non-material changes and so an amendment order should be granted in the terms of the draft statutory instrument which accompanies this application.

APPENDIX 1 – AMENDED CARBON CAPTURE REQUIREMENTS

Amended/inserted definitions in Requirement 1

"current CCS proposal" means–

(a) the pre-combustion CCS proposal; or

(b) the post-combustion CCS proposal;

"designated site" means the land shown hatched blue and labelled "Post Combustion CCS Area" on the works plans as the area where the undertaker proposes to locate capture equipment for the post-combustion CCS proposal;

"post-combustion CCS proposal" means the CCS proposal not including Work No. 2a set out in the feasibility study certified by the Secretary of State for the purposes of this Order;

"pre-combustion CCS proposal" means the CCS proposal including Work No. 2a set out in the feasibility study certified by the Secretary of State for the purposes of this Order;

"target carbon dioxide" means–

(a) in respect of the pre-combustion CCS proposal, as much of the carbon dioxide emitted by the first 300 MWe 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 pre-combustion carbon capture and storage technology for the time being; or

(b) in respect of the post-combustion CCS proposal, as much of the carbon dioxide emitted by 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 post-combustion carbon capture and storage technology.

CCS

36. Following commencement of the authorised development and until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State–

(a) dispose of any interest in the designated site except by way of a lease having a term of less than 2 years or which is otherwise determinable within 2 years 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 2 years following such act or occurrence or thereafter, to install and operate the capture equipment on the designated site.

37.–(1) The undertaker must make a report ("carbon capture readiness monitoring report") to the Secretary of State–

(a) on or before the date which is three months after 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) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement 36–

(a) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and

(b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report,

and explain how the undertaker expects to continue to comply with requirement 36 over the next two years.

(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.

38.–(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 only; or

(b) the Secretary of State has given in consent in writing to the plant being so operated and–

(i) capture equipment is installed for the pre-combustion CCS proposal;

(ii) the Secretary of State has either–

(aa) provided pursuant to any enactment that some or all of the emissions from the authorised development are not to be treated as emissions from fossil fuel; or

(bb) otherwise issued a direction pursuant to any enactment that the emissions duty of the undertaker is modified or suspended; or

(iii) an exemption period under section 58 of the Energy Act 2013(**a**) 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 the post-combustion CCS proposal) 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)(i) 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 sub-paragraph (a) or (b), those sub-paragraphs shall not apply.