



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

White Rose Carbon Capture and Storage Project

Examining Authority's Report of Findings and Conclusions

and

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

Examining Authority

Elizabeth Hill

14 January 2016

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ERRATA SHEET – White Rose Carbon Capture and Storage Project – Ref. EN010048

Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 14 January 2016

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

Page No.	Paragraph	Error	Correction
1	Preamble	“White Rose Carbon Capture Storage application”	“White Rose Carbon Capture and Storage application”
2	Contents 4.4	“COMBUSION”	“COMBUSTION”
12	1.3.20	“The only comments received were those from the Applicant...”	“Apart from those from the Applicant, no comments were received on the RIES.”
14	2.1.7	“..and located east to the east of which..”	“..located to the east of which..”
14	2.1.9	“An application for an offshore pipeline and storage facility under the North Sea will be subject to a licensing consent by the Marine Management Organisation.”	“An application for an offshore pipeline and storage facility under the North Sea will be subject to a licensing consent by the Oil and Gas Authority.”
19	2.3.2	“..remains..”	“..remain..”
27	3.7.1	“(EIA Regulations)”	“(“EIA Regulations”)”
35	4.2.3	“R4”	“Requirement 4” [First use]
39	4.4	“COMBUSION”	“COMBUSTION”
41	4.5.3	“..taken independent of decisions..”	“..taken independently of decisions..”
50	4.13.3	“..the monastic complex have been located..”	“..the monastic complex located..”
60	4.19.2	“..the Canal and Rivers Trust..”	“..the Canal and River Trust..”
71	6.2.5	“..visual intrusion in the landscape and minimise the impact..”	“..visual intrusion in the landscape and minimising the impact..”
75	7.1.6	“Alstrom”	“Alstom”
75	7.2.2	“Rights under or over streets (A29)”	“Rights under or over streets (A28)”
80	7.8.3	“..DCO [REP4-002]”	“DCO [REP1-060]”
82	7.8.14	“Neither body has objected to the DCO.”	“The EA has not objected to the DCO.”
88	7.9.5	“As regards there	“As regards to there being”

		being”	
97	8.5.14	“..development other site-raising..”	“..development other than site-raising..”

List of Abbreviations

C&RT Canal and River Trust
CCS Carbon Capture and Storage
FDO Footpath Diversion Order

ExA's findings and conclusions and recommendation in respect of the White Rose Carbon Capture Storage application

File Ref EN010048

The application, dated 21 November 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 24 November 2014.

The Applicant is Capture Power Limited.

The application was accepted for examination on 17 December 2014. The examination of the application began on 22 April 2015 and was completed on 15 October 2015.

The development proposed comprises a new thermal electricity generating station (an ultra-supercritical oxy-fuel power plant with the ability to co-fire biomass) with a capacity of up to 448 megawatts (MWe) gross, that will be fitted with Carbon Capture and Storage (CCS) technology in addition to associated development, on land within and adjacent to the existing Drax Power Station Site, near Selby, North Yorkshire.

Summary of Recommendation:

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

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1 INTRODUCTION

1.1 PREFACE

- 1.1.1 The application for a Development Consent Order (DCO) for the White Rose Carbon Capture and Storage Project (the proposed development) was submitted by the Applicant on 21 November 2014. The application was formally accepted by the Planning Inspectorate on 17 December 2014 under the provisions of the Planning Act 2008 (as amended) (PA2008).
- 1.1.2 The proposed development would be a new thermal electricity generating station, including associated development with a capacity of up to 448MWe gross. It would be built within and adjacent to the existing Drax power station site, near Selby in North Yorkshire. The generating station would be primarily coal-fired using an ultra-supercritical oxy-fuel process that would also have the ability to co-fire biomass in a mixture of oxygen and re-circulated flue gas (typically carbon dioxide and water vapour). The process produces a carbon dioxide-rich flue gas, allowing it to be captured for transport and storage.
- 1.1.3 The site lies wholly in England and is over the capacity threshold of 50MW, therefore it is considered a Nationally Significant Infrastructure Project (NSIP) as defined by section (s)14(1)(a) and s15(2) of the PA2008. The plant would be capable of providing Combined Heat and Power (CHP), should a customer for the heat be found, and would be fitted with carbon capture and storage (CCS) technology.
- 1.1.4 The application is for an Environmental Impact Assessment (EIA) development as defined by Regulation 2(1) of the Infrastructure Planning (EIA) Regulations 2009 (as amended). It was accompanied by an Environmental Statement (ES) which, in my view, complies with the Regulations. The ES [APP-034 to APP-065] was compiled following consultation on an earlier scoping report and takes into account the views of the Secretary of State's Scoping Opinion [APP-064]. It was subsequently amended by documents APP-079 and APP-082, which cover traffic sensitivity tests and the Landscape and Visual Impact Assessment (LVIA) respectively.
- 1.1.5 The application [APP-001 to APP-066], dated 21 November 2014, was made under s37 of the PA2008 and was received in full by the Inspectorate on 24 November 2014. It was accepted for examination on 17 December 2014 [PD-001] and examined under the provisions of the PA2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended).
- 1.1.6 Capture Power Limited (the Applicant), is the development company which proposes to build and operate the plant and is a fully-owned subsidiary of the Drax Group plc. Capture Power Limited (CPL) is a joint venture company owned in equal part by Drax CCS Ltd, Alstom UK Holdings Ltd and the BOC Group Ltd (part of Linde group).

- 1.1.7 The Inspectorate issued s51 advice¹ to the Applicant on 17 December 2014 to be read in conjunction with the published s55 Acceptance of the Applications Checklist [PD-002]. The s51 advice was issued due to the Book of Reference (BoR) [APP-008] not fully complying with relevant guidance under the PA2008 and in some instances did not cross-refer to the relevant articles in the draft DCO (dDCO) [APP-005]. The Inspectorate also noted to applicant that the Works plans [APP-014] and Access Rights of Way plans [APP-015] were either numbered incorrectly or referenced incorrectly within the DCO and therefore, certainty was required to ensure that all application documents submitted were consistent.
- 1.1.8 The accepted application was advertised under s56 of the PA2008 and 15 relevant representations were received from interested parties (IP) in relation to the application. On 13 February 2015 the Applicant issued their certificate of compliance [OD-002] and confirmed to the Inspectorate under s58 and s59 that it had complied with s56 of the PA2008.
- 1.1.9 My appointment, as a Single Examining Inspector on 3 March 2015 to be the Examining Authority (ExA) for this application was confirmed in Annex F to my Rules 4 and 6 letter [PD-004], dated 30 March 2015, inviting Interested Persons (IP)s to the Preliminary Meeting (PM).
- 1.1.10 In response to s51 advice issued by PINS and my Rule 6 letter (item 3 of Annex B), the Applicant confirmed on 13 April 2015 [APP-080], that they wished to submit amended application documents into the examination to supersede those submitted for acceptance and make non-material changes to their application documents. The non-material changes to the Applicant's application documents, resulted from North Yorkshire County Council (NYCC) issuing a confirmed Footpath Diversion Order (FDO) in respect of a number of public footpaths within the Order limits; and National Grid Electricity Transmission plc (NGET) making a grid connection offer to the applicant. In my Rule 8 letter [PD-005] issued on 29 April 2015 I confirmed in Annex C, that I would accept the Applicant's submission of non-material amendments and updates to the application documents [APP-067 to APP-083] into the examination.
- 1.1.11 In accordance with s83(1)(b)(i) and 83(1)(b)(ii) of the PA2008, this report sets out my findings and conclusions in respect of the application and my recommendation to the Secretary of State (SoS) for the Department of Energy and Climate Change (DECC) as to the decision to be made on the application.
- 1.1.12 A list of the procedural decisions [PD-001 to PD-013] I have made as the appointed ExA is provided in the Examination Library appended to this report (Appendix B).

¹ [Post-acceptance s51 advice issued to the Applicant](#)

- 1.1.13 Since the close of the examination, on 25 November 2015, the Chancellor issued his Autumn Statement and Spending Review. An announcement as part of this process withdrew the funding which had previously been allocated to support the pilot projects for CCS, including WRCCS. The Applicant acknowledged the announcement on their website the same day. My report is based on the information available at the close of the examination and therefore cannot take the announcement into account. It would be a matter for the SoS to consider any implications in her decision.

1.2 THE PRELIMINARY MEETING

- 1.2.1 The PM was held at the Lowther Hotel, Aire Street, Goole on 22 April 2015 at which the Applicant and all IPs, Statutory Parties and other parties were able to make representations about how the application should be examined and what the key issues were that needed to be examined.

- 1.2.2 At the PM the Applicant requested an opportunity to undertake non-statutory consultation on their non-material application document changes during the examination and suggested alternative dates within the draft examination timetable to accommodate this consultation.

- 1.2.3 Following representations made at the PM [EV-003 and EV-004] I issued my Rule 8 letter [PD-005] on 29 April 2015 to those invited to the PM, which included my timetable for the Examination, my First Written Questions (FWQ), an invitation to submit written representations (WR), Statements of Common Ground (SoCG) and requests for notifications to attend hearings and an accompanied site inspection (ASI).

- 1.2.4 I issued a procedural decision in my Rule 8 letter (Annex C), confirming to the applicant, to undertake non-statutory consultation. This decision subsequently led to the amendment of the draft examination timetable issued in my Rule 6 letter (Annex D). I requested that the applicant compile any responses received to their newspaper notification about the non-material application document changes and provide this report to me by Deadline III. The applicant submitted this report [REP3-004] on 19 June 2015.

1.3 THE EXAMINATION PROCESS

LOCAL IMPACT REPORTS

- 1.3.1 Under s60 of the PA2008 an invitation was issued to the relevant Local Authorities in my Rule 8 letter to submit a Local Impact Report (LIR). A joint LIR was received from Selby District Council (SDC) and North Yorkshire County Council (NYCC) [APP-056].

WRITTEN QUESTIONS

- 1.3.2 I issued two rounds of written questions. My FWQ [PD-006] were issued on 29 April 2015 and I subsequently issued my second written questions (SWQ) [PD-009] on 22 July 2015.
- 1.3.3 I issued three requests for further information and/or comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), related to further information on noise issues. These were issued on:
- 7 September 2015 to all IPs requesting further information and/or comments [PD-010];
 - 30 September 2015 to all IPs requesting further information and/or comments [PD-012];
 - 8 October 2015 to all IPs requesting further information and/or comments [PD-013].
- 1.3.4 Only the letter issuing my SWQ on 22 July 2015 and the Rule 17 letter issued on 30 September 2015 constituted amendments to the timetable under Rule 8(3) of the EPR.

STATEMENTS OF COMMON GROUND

- 1.3.5 At Annex C to my Rule 8 letter I suggested that it would be helpful to receive from the Applicant and other relevant IPs, the following SoCG during the examination process:
- SoCG with SDC to include planning policy, regeneration, air quality, landscape and visual impact, noise and disturbance, and heritage;
 - SoCG with NYCC to include planning policy, highways and transport, and waste/minerals;
 - SoCG with the Environment Agency (EA) to include environment permit, air quality, waste abstraction and discharge, water quality, flood risk, nature conservation, CHP, and carbon capture;
 - SoCG with Natural England (NE) to include impacts on European sites and Sites of Special Scientific Interest (SSSI), and impacts on protected species;
 - SoCG with Yorkshire Wildlife Trust (YWT) to include impacts on locally managed wildlife sites, opportunities for wildlife in the proposal, and biodiversity offsetting;
 - SoCG with Canal and River Trust (C&RT) to include use of the River Ouse for construction and operation of the project.
- 1.3.6 I advised that SoCGs should cover the following topics where relevant:
- Methodology for EIA including assessment of cumulative;
 - Data collection methods;
 - Baseline data;
 - Data/statistical analysis, approach to modelling and presentation of results (including forecast methodologies);
 - Full expression of expert judgements and assumptions;

- Identification and sensitivity of relevant features and quantification of potential impacts;
- Likely effects (direct and indirect) on special interest features if sites designated or notified for any nature conservation purpose;
- Feasible and deliverable mitigation and method for securing such mitigation within the DCO.

1.3.7 The Applicant submitted draft SoCGs between it and the following parties for Deadline I:

- EA [REP1-002];
- NYCC and SDC [REP1-041];
- C&RT [REP1-042];
- NE [REP1-043];
- Historic England (HE) [REP1-044];
- YWT [REP1-045].

1.3.8 The Applicant also submitted updated versions of these SoCG regarding the progress on agreed and/or matters not agreed with relevant parties throughout the Examination. These updated versions and/or progress of SoCG were received by:

- Deadline II with C&RT [REP2-007], NE [REP2-008], HE [REP2-009] and YWT [REP2-010];
- Deadline III with NYCC and SDC [REP3-002], C&RT [REP3-003] and EA [REP3-007];
- Deadline IV with NYCC and SDC [REP4-005], NE [REP4-006], HE [REP4-007], YWT [REP4-008] and EA [REP4-009];
- Deadline V with YWT [REP5-009] and EA [REP5-010];
- Deadline VI with NYCC and SDC [REP6-007];
- Deadline VII with NYCC and SDC [REP7-008];
- Deadline VIII with NYCC and SDC [REP8-003];
- Deadline IX with NYCC and SDC [REP9-003];

1.3.9 The SoCGs received for Deadline III [REP3-003], Deadline IV [REP4-006 and REP4-007], Deadline V [REP5-009 and REP5-010] and Deadline IX [REP9-003] were signed versions of agreements between the Applicant and the relevant IPs.

HEARINGS

1.3.10 On 1 July 2015 I held an Issue Specific Hearing (ISH) on environmental impacts [EV-005 to EV-007] during the daytime and in the evening of the same day I held an Open Floor Hearing (OFH) [EV-009], which was opened, adjourned and then closed due to lack of attendance. I held a compulsory acquisition (CA) hearing [EV-010 and EV-011] on the morning of 2 July 2015 and a further ISH to consider the dDCO [EV-012 and EV-013] in the afternoon of the same day. All hearings were held at the Lowther Hotel, Aire Street, Goole.

1.3.11 In advance of the ISH on environmental impacts, the Applicant submitted to the examination a note on technical issues relating to operational noise [EV-008]. The issue of operational noise was a

matter discussed at this ISH by NYCC, SDC and the EA. All parties subsequently provided comments on this matter in their post-hearing summary document [REP4-013 and REP4-014].

- 1.3.12 In light of oral submissions made at the hearings and subsequent post-hearing submissions received [REP4-001 to REP4-015], I issued in my letter of 22 July 2015 [PD-008] a procedural decision to amend the examination timetable and remove the dates 'reserved' for an Accompanied Site Inspection (ASI) and/or ISHs on the 2 and 3 September 2015.

SITE VISIT

- 1.3.13 In my Rule 8 letter [PD-005] I requested nominations of locations to be inspected for the ASI scheduled for the 3 July 2015. A confirmed itinerary and plan [EV-014], comprising a visit predominantly within the application site boundary and viewpoints from its surroundings, was prepared and issued on 22 June 2015.
- 1.3.14 The ASI was undertaken in the company of the Applicant, SDC, NYCC and Long Drax Parish Council.

OTHER CONSENTS

- 1.3.15 In addition to consent required under the PA2008 (the subject of this report and recommendation), the proposed development requires other consents and permits. Section 24 of the application form [APP-003] lists the following:
- Electricity Generation Licence under Section 6 of the Electricity Act 1989 (licences authorising supply, etc.);
 - Environmental Permit for the operation of the generating station under the Environmental Permitting (England and Wales) Regulations 2010;
 - Water Abstraction Licence under Sections 24 and 25 of the Water Resources Act 1991;
 - Consent under Section 23 of the Land Drainage Act 1991 (prohibition on obstructions etc in watercourses);
 - Consent under Regulation 9 of the Water Resources (EIA) Regulations 2003;
 - Consent for Hazardous substances under the Planning and Hazardous Substances Regulations 2009;
 - A licence for badgers under the Protection of Badgers Act 1992;
 - Building Regulations Approval under building Regulations 2000 (as amended);
 - Bilateral Connection Agreement for entry into the National Grid/National Transmission System for the export of electricity from the site;
 - Construction Noise Consent under Section 61 of the control of Pollution Act 1974;

- Permit for Transport of Abnormal Loads under Road Vehicles (Authorisation of Special Types) (General) Order 2003 or from SoS under the Road Traffic Act 1988;
- Regulatory Reform (Fire Safety) Order 2005.

1.3.16 The applicant submitted a document into the examination providing details on these other consents and licences [APP-029], which they considered may be required for the proposed development. This document was updated for Deadline V [REP5-007], Deadline VI [REP6-006] and Deadline VII [REP7-006] to reflect amendments and/or progress in reaching agreements with relevant consenting bodies during the examination. The following consents/agreements were confirmed by the close of the examination:

- An electricity generation licence was granted by OFGEM on 24 July 2015;
- A Land Drainage Consent was granted by the Shire Group of Internal Drainage Authorities on 11 August 2015 for works impacting Carr Dyke;
- A hazardous substance consent was granted by SDC on 7 May 2014;
- A bilateral agreement was entered into by the applicant and NGET on 1 June 2015 for the grid connection and the export of electricity from the site.

1.3.17 As well as the above, the applicant also submitted an application to NE requesting a licence under the Protection of Badgers Act 1992. NE confirmed on 14 August 2015 with a "no impediment" letter that a licence could be issued, subject to the DCO being granted.

1.3.18 In addition to the DCO, the power plant requires an environmental permit from the EA to control emissions. The EA confirmed in their submission for Deadline IV, that an environmental permit application was "duly made" on 25 June 2015 [REP4-013]. However, a decision on the permit had not been made by the close of the examination.

1.3.19 A development consent agreement [REP7-011] has been signed by SDC, as the local planning authority, the Applicant and those with financial interests in the site, and YWT.

REPORT ON IMPLICATIONS FOR EUROPEAN SITES (RIES)

1.3.20 Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations), where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the Habitats Regulations and Offshore Marine Regulations relating to European Sites. The Applicant's DCO application concluded that there is the potential for likely significant effects on three European sites and therefore submitted a report [APP-059] to inform the Habitats Regulations Assessment (HRA), which included screening and integrity

matrices. The RIES [OD-004], which compiles, documents and signposts the information received with the application and during the Examination, was issued on 7 September 2015 [PD-010] to all IPs. Comments on the RIES were requested for Deadline VII - 23 September 2015, as set out in the amended Examination timetable [PD-008]. The only comments received were those from the Applicant [REP7-001], who agreed with the conclusions of the RIES.

1.4 REQUEST TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA)

- 1.4.1 Dan Parry-Jones on behalf of Royal Mail, acknowledged in their submission of 13 February 2015 that they had not submitted a representation to become an IP. However, it was confirmed under s89(2A)(b) of the PA2008 that Royal Mail still wished to be an IP in the examination. I accepted the submission as an additional submission [AS-001] and granted Royal Mail the status of IP.
- 1.4.2 Trinity House, an unregistered party, submitted a representation on 5 May 2015 requesting to be an IP. I accepted the submission as an additional submission [AS-008] and granted Trinity House the status of IP.
- 1.4.3 The Homes and Communities Agency, in their correspondence dated 13 May 2015 [AS-004], confirmed that they no longer wished to be an IP in the examination.

1.5 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT THE APPLICATION

- 1.5.1 The applicant submitted a signed development consent agreement for Deadline V - 5 August 2015 [REP5-011] at Q2.1 Appendix 1 in response to my SWQ. This was superseded by a submission received for Deadline VII - 23 September 2015 [REP7-011] to exclude one of the freehold owner's mortgagee parties, Deutsche Bank AG. This was done in agreement with SDC, as the local planning authority. The development consent agreement provides funds to YWT for surveys, habitat creation and site management at Barlow Common and Skerne Wetlands to mitigate the impact of the development. This is discussed further in Chapter 4 of this report.

1.6 STRUCTURE OF REPORT

- 1.6.1 The following Chapters of the report set out the main features of the proposal and its site, the legal and policy context, my findings and conclusions on all important and relevant issues relating to development consent, including CA, and finally my recommendation to the SoS as to whether the Order should be made. Should the SoS decide to make the Order, a recommended version is attached at Appendix A, as are the Examination Library including the RIES (Appendix B), lists of events in the Examination (Appendix C), and a list of abbreviations (Appendix D).

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

The Application proposal and site context

- 2.1.1 The proposed development is for the construction, operation and maintenance of a new thermal generating station with a nominal gross electrical output capacity of up to 448MWe gross that will be fitted with CCS technology and associated development. The location of the application site is shown on the Site Location plan and the Land plan, the latest versions of which are APP-072 and APP-073, which were accepted into the examination as post submission changes to the application documents. The application site is about 116ha in extent, of which approximately 29ha would form part of the permanent operational area.
- 2.1.2 The operation of the power plant would be mainly in "oxy-mode" with 96% oxygen being used in the combustion process, which would allow for carbon capture to take place. It can also operate in "air mode" with only 21% of oxygen used in the process, which is the method used in a standard coal-fired power station. This method would also be used during the start-up and shutdown periods, when the carbon dioxide (CO₂) pipeline and the gas processing unit are off-line. The air mode has therefore been designated as the abnormal operating mode for the purposes of environmental assessment.
- 2.1.3 The site includes land both within, and adjacent to, the operational boundary of the existing Drax power station site and includes part of the Barlow Mound, which receives bottom ash and other waste from the existing power station. The site is shown on the Land plan [APP-073].
- 2.1.4 The site is about 6km south east of Selby town centre, about 8km north-west of Goole and about 2km from the nearest villages of Long Drax, to the north-east, and Barlow, to the north-west. The site lies entirely within the administrative boundary of SDC, which in turn lies within the county boundary of North Yorkshire. The site (except areas within the Power Station and at Barlow Mound) comprises land that has been used in connection with the Drax power station for the storage, handling and preparation of wood and biomass materials for co-firing within the existing power station and topsoil storage. The remaining part is used for agricultural purposes, such as growing crops.
- 2.1.5 The River Ouse is located approximately 1.5km to the north and north-east of the site and Barlow Mound is situated immediately to the north and west. A public right of way (PRoW) runs along the western edge of the application site, past Barlow Mound and then eastwards across the site to Pear Tree Avenue. This footpath was subject to an application for a FDO. This is shown on the Access and Rights of Way plan [APP-075].

- 2.1.6 All heavy good vehicles (HGVs) enter and exit the existing power station from Junction 36 of the M62 via the A645, whilst a dedicated rail spur enters the site from the south-west, serving the internal 'merry go round' rail systems used for the delivery of coal. The River Ouse links the Port of Goole with the River Humber and the North Sea. The proposed development intends to use the existing jetty on the western bank of the Ouse, presently linked to the existing power station site by Redhouse Lane and then Carr Lane.
- 2.1.7 The site is crossed by a number of drainage ditches, including Carr Dyke. The site is relatively low lying, with the highest levels in the north-west and the lowest in the south-east around the Carr Dyke. Immediately to the north of the site is a Scheduled Monument (SM) known as Drax Augustine Priory and located east to the east of which is Drax Abbey Farm.
- 2.1.8 There are seven European sites identified within a 15km radius of the proposed development. Five sites were identified as Special Area of Conservation (SAC) and two were identified as Ramsar sites, namely the Lower Derwent Valley SAC; Humber Estuary SAC; River Derwent SAC; Skipwith Common SAC; Thorne Moor SAC; Lower Derwent Valley Ramsar site and Humber Estuary Ramsar site. Three Special Protection Areas (SPAs) were identified within this distance; however the Applicant indicated in the HRA [APP-059, Section 4.1 of Chapter 4] that the qualifying birds features would not be sensitive to the effects arising from the proposed development. The location of these European sites is shown on the Habitats plan [APP-057].
- 2.1.9 The application is one of 3 linked proposals for a project designed to test the commercial viability of CCS. This application comprises the generating station and CCS facility, which would support a separate NSIP application submitted by National Grid Carbon Limited (NGCL) for the Yorkshire and Humber Carbon Capture Storage cross-country CO₂ pipeline project (72km of onshore pipeline from Drax to a land fall point near Barmston, in the East Riding of Yorkshire), presently being considered for decision by the SoS. An application for an offshore pipeline and storage facility under the North Sea will be subject to a licensing consent by the Marine Management Organisation (MMO).

Scope of proposed works

- 2.1.10 The proposed authorised development is described in Schedule 1, Part 1 of the recommended DCO, whilst the Works plan [APP-074] identifies the components of the project as referenced in Schedule 1 of the Order.
- 2.1.11 The principal works of the proposed development would be:
- Works No. 1A and 1B to include site raising and preparation works to develop a platform for the generating station in order to mitigate flood risk and to create bridges and crossings over Carr

Dyke for site access works, site raising and hardstanding for the laydown and construction areas;

- Work No. 1A to include the generating station, a boiler house, steam turbine, cooling water towers, flue gas treatment systems, a flue gas emissions stack, air separation units and CO₂ processing and compression facilities;
- Work No. 1B to include laydown and construction areas for construction and maintenance;
- Work No. 2 to include fuel intake, limestone and gypsum and fuel ash handling and transportation infrastructure, including connection with the existing Power Station for the delivery of fuel and limestone for the combustion and flue gas desulphurisation process and the export of fuel ash for storage at Barlow mound;
- Work No. 3 to include fuel ash storage at Barlow mound;
- Work No. 4 to include an underground connection to either a 132kV or 400kV electricity grid along the eastern side of the site to an existing substation located south-east or an alternative option being a 132kV cable and associated infrastructure which links to an existing overhead cable to the north of the site;
- Work No. 5 to include connections to existing cooling water, potable water and sewerage and related facilities;
- Work No. 6 to include vegetation clearance and the creation of a new hardstanding area immediately adjacent to the existing jetty on the River Ouse for the unloading and storage of equipment and materials delivered by barge and parking and circulation space for vehicles transporting items from the jetty;
- Work No. 7 to include the underground diversion of an existing overhead 11kV electrical cable; and
- Work No. 8 to include works to one of two existing substations to facilitate the grid connection.

2.1.12 Work No. 6 is identified as the only associated development under s115 of the PA2008. All others are identified as integral by the Applicant.

2.1.13 The proposed development will also include the following related components, as part of the development listed above:

- site clearance, vegetation removal, demolition of existing structures and buildings, soil stripping and storage, bunds, embankments and earthworks;
- drainage works, culverts and wing walls;
- temporary de-watering and drainage facilities;
- lighting, site fencing, gates and CCTV
- landscaping, habitat creation and ecological mitigation;
- site compounds, construction-related buildings, structures, laydown, storage, plant, machinery, utilities, welfare facilities and haulage roads;
- electricity, water, wastewater, waste, gas, telecommunications and other services;

- site roads and parking areas, site access works, new site access points, and works required for the strengthening, improvement, maintenance or reconstruction of any street; and,
- temporary and permanent footpaths.

2.1.14 The main maps and plans for the application include :

- 4.1 Site Location plan [APP-012];
- 4.2 Land plan (Key plan and Sheets 1-5) [APP-013];
- 4.3 Works plan (Key plan and Sheets 1-4) [APP-014];
- 4.4 Access and Rights of Way plans (Key plan and Sheets 1-4) [APP-015];
- 4.5 Indicative Generating Station Drawings (Work No. 1A) [APP-016];
- 4.6 Indicative Site Raising Drawing (Work Nos. 1A and 1B) [APP-017];
- 4.7 Indicative Fuel Intake, Limestone and Gypsum and Fuel Ash Handling and Transportation Infrastructure Drawing (Work No. 2) [APP-018];
- 4.8 Indicative Electrical Connection Routes (Work No. 4) [APP-019];
- 4.9 Indicative Drainage plan [APP-020]; and
- 4.10 Indicative Landscaping and Biodiversity Framework plan [APP-021].

Grid connection

2.1.15 The grid connection would be made at either the 132kV or the 400kV substation, which are located adjacent to each other about 1km away in the south-eastern part of the Drax Power Station. The connection will be made by either a new underground cable to the respective substation or part new underground cable and part existing 132kV transmission overhead lines. The existing overhead line is located 500m south of the proposed development and terminates approximately 700m from the 132kV NGET substation.

2.1.16 The works to connect to the existing transmission overhead line would comprise installation of a new compound and cable connections, whilst the works to the substation would comprise the installation of new substation bays and upgrading of some existing 400kV switchgear and possible installation of new 132/400kV supergrid transformers. The Works plan [APP-014] show the route options for the underground cable (Work No. 4) and the connection locations to either the 132kV or 400kV substation (Work No. 8).

2.2 APPLICATION AT THE CLOSE OF THE EXAMINATION

2.2.1 On 13 April 2015, the applicant submitted a letter [APP-080] confirming that a FDO had been made by NYCC in respect of a number of public footpaths within the Order limits and that NGET had made an offer on the grid connection options for the proposed development. This subsequently led to the applicant making a number of non-

material changes to the application to reflect this update and submitting a number of non-material amendments to the original application documents, together with updates and corrections to the application following s51 advice issued at acceptance.

- 2.2.2 NYCC made a FDO on 29 October 2014, which was confirmed on 13 February 2015 [APP-081] along with the Order plan [APP-083]. The FDO relates to two areas of the proposed site and provides for:
- The stopping up of the footpath between points marked A-B-C-D-E-F, running west from New Road across the southern side of Work No. 1A [APP-074], and its replacement with newly created footpath around the northern side of Work No. 1A, between points marked A-J-K-L-M-N-O-P-Q-R-S-T-U-V on the Order plan
 - The stopping up of the footpath between points marked G-H-I that crosses the proposed development laydown area to the east of New Road, and its replacement with a footpath along Pear Tree Avenue and a length of New Road, between points marked W-X-I on the Order plan.
- 2.2.3 The Applicant subsequently submitted an amended tracked changes dDCO [APP-068] to reflect the above, a tracked changes Explanatory Memorandum [APP-069] to explain the changes to the dDCO, and an Access and Rights of Way plan [APP-075] to depict the relevant 'temporary part' of the footpaths being stopped up and/or created as a result of the FDO, and not the dDCO. As the FDO provides for the stopping up and creation of relevant footpaths for the proposed development (Work No. 1A), it is no longer required to include these elements into the recommended DCO. The proposed alteration is also reflected in the removal of the original Article (A) 14, related definitions in A2 and Schedule 7 of the recommended DCO.
- 2.2.4 The proposed development provided for three grid connections options, one to the 400kV substation and two cable route options to the 132kV substations. On 10 December 2014 NGET submitted a connection agreement offer to the Applicant, for the NGET-owned 400kV substation approximately 1km south of Work No. 1A and identified as Work No. 8 on the amended Works plan [APP-074]. Following the grid connection offer, the applicant no longer required the two 132kV substation options within the order.
- 2.2.5 A number of amended/updated documents were therefore submitted to reflect the non-material change as a result of the updated grid connection offer, namely a dDCO (tracked changes) [APP-068], Explanatory Memorandum (tracked changes) [APP-069], BoR [APP-070], Statement of Reason [APP-071], Site Location plan [APP-072], Land plans [APP-073], Works plans [APP-074], Access and Rights of Way plans [APP-075], Indicative Route of Electrical Connection for 400kV plan [APP-076] and the Grid Connection Statement in clean [APP-077] and tracked changes version [APP-078].

- 2.2.6 The Land plans and BoR were updated to remove plots of land which were no longer proposed to be included in the Order limits. No plot numbers have been changed in this undertaking in order to ensure consistency in cross referral between the original Land plans/BoR and the amended/updated documents, however to reflect the change in the dDCO, plot 60 changed from land over which rights are sought to land required temporarily.
- 2.2.7 In addition, the Applicant also produced a technical note [APP-079] on transport impacts to fully reflect the proposed operation. The technical note outlines the position on transport impacts, including biomass transport and provides a sensitivity test of the operational assumptions in order to check the conclusions of the ES on operational transport.
- 2.2.8 These amended and/or updated documents referred to above were made available for comment as part of the examination process where submissions were received for Deadline II by IPs, and were also the subject of a separate non-statutory public consultation, carried out by the applicant. A report [REP3-004] on the responses to the non-material amendments to the DCO application and updates to the application documents was received for Deadline III by the applicant on 19 June 2015. None of the responses raised any concerns or objections to the non-material amendments. Although an IP, Kirkwood Stewart Young, made an additional submission [AS-014] regarding the Applicant not making direct contact with local people on the project. However, prior to acceptance of the application, the Applicant had already carried out the necessary public consultation [REP9-004] and the public have also had the opportunity to comment on the non-material changes to the application as well as the material which has emerged as a result of the examination.
- 2.2.9 The details of changes to the key application documents, including the wording of the proposed DCO and the content of the HRA report, were submitted and updated during the Examination. The changes in the documentation seek to address points raised by IPs and my questions and to reflect improved information and changes arising during the Examination. These included matters such as funding, noise mitigation and other environmental matters.
- 2.2.10 The Applicant also submitted a range of updated, revised and/or additional information, including an Application Index, Project and Funding report, Summary of Noise Mitigation Measures, Habitats Regulations Assessment Report, ES Mitigation Annex, Compulsory Acquisition Funding Statement, Access and Rights of Ways plans, Land and Works plans, Other Consents and Licenses report, BoR, Indicative Landscaping and Biodiversity Framework plans, Report on Archaeological Evaluation and an Executed s106 Deed of Development Consent Obligations.
- 2.2.11 All updated, revised maps and plans and/or additional information were accepted into the Examination.

2.3 RELEVANT PLANNING HISTORY

- 2.3.1 No previous NSIPs relating to the application site have been submitted to date. There is however, extensive planning history to the application site, which is set out in Annex A of the joint NYCC and SDC LIR [REP1-056], received for Deadline I. The area has been the subject of a number of consents and planning permissions related to electricity generation. These include:
- Planning permission ref. C8/22/89/PA dated 30.08.1989 for the temporary storage of peat arising from construction work at Drax Power Station.
 - S36 consent and deemed planning permission dated 28.04.1993 for the deposition of ash, gypsum and flue gas desulphurisation residues and ancillary works including plant and equipment (including the linked s106 agreement dated 04.09.1992).
 - Consent for a coal-fired power station in 1964 and further consents of the storage of fuel ash (1971 and 1984) and a flue gas desulphurisation plant (1988). In February 2008 SDC granted planning permission for the conversion of three of the existing generating units to biomass from coal. This consent is in the process of being implemented.
- 2.3.2 The operational area of the project site lies within the boundary of the site which was granted consent by the SoS under s36 of the Electricity Act 1989 for a 299MWe biomass fuelled generating station (the Ouse Renewable Energy Plant). This consent and deemed planning permission remains extant.
- 2.3.3 The site raising works involved in raising the level of the sites within Works No. 1A and parts of Works No. 1B are necessary to mitigate flood risk within the operational area of the site. In order to progress the development rapidly, the applicant applied for these works separately under the TCPA 1990. The application was submitted to SDC on 10 March 2015 (Ref. 2015/0249/EIA), validated from 11 March 2015 and granted, planning permission (Ref. 2015/0229/EIA) on 15 June 2015 for the land raising works so that work can commence on this element of the scheme in advance of the main development. It has been included in the DCO to ensure that it can be delivered.
- 2.3.4 It has also been confirmed in the Applicant's amended Other Consents and Licenses [REP7-006] document submitted for Deadline VII, that the necessary consent for the storage of hazardous substances had been granted by virtue of Hazardous Substances Consent ref. 2013/1186/HAZ dated 07.05.2014.

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

- 3.1.1 This Chapter sets out the main legal and policy context which has been taken into account in carrying out the examination of the application and making my findings and recommendation in this report.
- 3.1.2 Secondary legislation and guidance under the PA2008 has been fully taken into account throughout the Examination as far as it is relevant. Where appropriate, this legislation and guidance is referenced within the individual Chapters in this report
- 3.1.3 The application describes policy considerations in the Planning Statement [APP-030] and in ES [APP-035, Chapter 2].

3.2 PLANNING ACT 2008 (AS AMENDED)

- 3.2.1 The proposed development is a generating station with a maximum capacity of 448MW, which is a NSIP, as defined in s14(1)(a) and s15 of the PA2008. National Policy Statements (NPS) in respect of this type of development have been published. The Secretary of State (SoS) must, therefore, subject to certain exceptions, determine the application in accordance with the relevant NPS as specified in s104(3) of PA2008.
- 3.2.2 The Overarching NPS for Energy (EN-1) was published in July 2011 and sets out the Government's policy for the delivery of major energy infrastructure. It was accompanied by other technology specific NPSs for the energy sector. The other NPS documents relevant to this case include the NPS for Fossil Fuel Generating Infrastructure (EN-2) and Electrical Networks Infrastructure (EN-5). The application states that the primary fuel source of the generating station is coal, which is covered by EN-2, although the plant would be capable of co-firing with biomass, which is a renewable fuel. Paragraph 2.5.20 of EN-3, which covers renewable energy projects, states that the examination of co-firing applications should be guided by policy in EN-2. The application does not envisage firing only with biomass and documents such as the transport sensitivity test, which is part of the ES, has only tested scenarios up to the theoretical maximum of 15% biomass for co-firing.
- 3.2.3 In addition to the NPSs, s104(2) also requires the SoS to have regard to any LIR and to any other matters which the SoS considers important and relevant as part of the decision making process.

3.3 CLIMATE CHANGE ACT 2008

- 3.3.1 The Climate Change Act 2008 committed the UK to reducing greenhouse gas emissions by 80% in 2050 from the 1990 baseline. It also included provisions for carbon budgeting and trading schemes

and a National Adaptation Plan and established the Committee on Climate Change.

3.4 NATIONAL POLICY STATEMENTS

EN-1 The overarching National Policy Statement for Energy

- 3.4.1 EN-1 sets out the implications for meeting the UK's commitment to cut greenhouse gas emissions for energy policy. The Government is concerned to ensure that developers deliver the required levels of investment in low carbon generation to decarbonise the way energy is produced. Chapter 3 of EN-1 sets out a mix in which there will be additional renewable capacity, more nuclear capacity and other measures including CCS. This project would be a CCS project for which paragraph 3.6.8 states there is "an urgent need" and this distinguishes it from other Carbon Capture Readiness (CCR) projects. However, the project also meets the requirements of EN-1 in also being CCR. The development of the demonstration projects for CCS, described in paragraph 3.6.5 of EN-1, of which this is one, is seen as necessary to allow fossil fuel energy generation during the period of transition to low carbon generation.
- 3.4.2 EN-1 also requires development to demonstrate principles of good design, be CHP ready and be ready to capture and store carbon, if the plant is over 300MW. It also covers grid connections, other applications and consents, nuisance and security. The importance of development plans is discussed, although it states that the NPS has more weight where there is conflict.
- 3.4.3 The need for carbon capture is further explained in the SoS's Guidance on CCR published in 2009 and the SoS is prevented from granting a DCO under the CCR (Electricity Generating Stations) Regulations 2013 unless specified conditions are met and a requirement imposed ensuring that sufficient space is set aside for the capture and compression.

EN-2 National Policy Statement for Fossil Fuel Electricity Generating Infrastructure

- 3.4.4 EN-2 sets out the factors which should influence the development of sites for fossil fuel power stations and the criteria which Government requires to be met which includes CHP, CCR, climate change adaptation and consideration of good design. In terms of the impacts of such stations, EN-2 re-iterates the policy in EN-1 and adds the need to consider impacts of air emissions (section 2.5), landscape and visual (section 2.6), noise and vibration (section 2.7), release of dust (section 2.8), residue management (section 2.8) and water quality and resources (section 2.10).
- 3.4.5 The NPS confirms the Government's policy that all new coal-fired generating stations should be required to capture and store the carbon emissions from a substantial proportion of their capacity. As part of the transition towards a secure decarbonised electricity system, the

move to clean coal through the development and deployment of CCS technologies offers the opportunity to reduce fossil fuel generating station carbon emissions by 90%.

EN-5 National Policy Statement for Electricity Networks Infrastructure

- 3.4.6 The project would have a mainly underground connection from the plant to an existing substation on the existing Drax power station. Given its underground nature of the connection and a route that crosses the largely developed industrial site at the existing power station, it would have relatively limited impacts. EN-5 requires the assessment of climate change adaptation, consideration of good design in mitigating the potential impacts of overhead lines (section 2.5) and the mitigation of potential impacts of electricity networks in terms of biodiversity and geological conservation (section 2.7), landscape and visual impacts (section 2.8), noise and vibration (section 2.9) and the impacts of electro-magnetic fields (section 2.10).

3.5 EUROPEAN POLICIES AND RELATED UK REGULATIONS

Habitats Directive (Council Directive 92/43/EEC)

- 3.5.1 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive 2009/147/EC) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance.

Birds Directive (Council Directive 2009/147/EC)

- 3.5.2 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. 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 comprising the most suitable territories for these SPAs. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.5.3 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific and cultural requirements while taking account of economic and recreational requirements.

- 3.5.4 The three SPAs (Humber Estuary, Lower Derwent Valley and Thorne Moore) identified within a distance of 15km from the proposed development were not taken further in the Applicant's assessment as the HRA [APP-059, Section 4.1 of Chapter 4] indicates that the qualifying bird features would not be sensitive to the effects arising from the project.

The Conservation of Habitats and Species Regulations 2010 (as amended) - The Habitats Regulations

Habitats

- 3.5.5 The Habitats Regulations updated the legislation and consolidated all the many amendments which have been made to Regulations since they were first introduced in 1994.
- 3.5.6 The Habitats Regulations apply in the terrestrial environment and in territorial waters out to 12 nautical miles. Regulation 61 requires that a 'competent authority', before deciding to give consent for a plan or project which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and which is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.
- 3.5.7 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The 2010 Regulations, which are the principal means by which the Habitats Directive is transposed in England and Wales, updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994. The 2010 Regulations were subsequently amended by The Conservation of Habitats and Species (Amendment) Regulations 2012, which came into force on 16 August 2012. This placed new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild animals.
- 3.5.8 The SoS is the competent authority for the purposes of the Regulations.
- 3.5.9 No significant issues in relation to the Habitats Regulations arising from the proposed development have been identified by the Applicant, NE or by any other party during the examination. The nature conservation aspects of the proposal are discussed in Chapter 4 of this report.

Species

- 3.5.10 The Habitats Regulations impose criminal penalties for various activities in relation to protected European species of wild animals and plants. Regulation 53 enables licences to be issued for specified activities; anything done under and in accordance with the terms of

the license is then not an offence under the Regulations. The licensing body in England is NE.

- 3.5.11 NPS EN-1 states that the decision-maker will need to take into account whether the appropriate nature conservation body has granted or refused, or intends to grant or refuse, protected species licences. The latest position on protected species licences is discussed in Chapter 4 of this report.

Project context

- 3.5.12 A total of three European sites were screened for likely significant effects by the Applicant in an updated HRA report [REP1-023]. I issued a RIES [OD-004] on 7 September 2015. The RIES documents and signposts information which has been provided within the DCO application and the information submitted throughout the examination by both the applicant and IPs, in relation to potential effects on European Sites.
- 3.5.13 Section 2 of the RIES identifies the European sites that have been considered, either alone or in-combination with other projects and plans. Section 3 considers the likelihood of significant effects. HRA issues are discussed in Chapter 5 of this report.

Water Framework Directive

- 3.5.14 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 was adopted. It came into force on 22 December 2000 and entered into force the same day, with some subsequent amendments.²
- 3.5.15 Water issues, including flood risk and water resources, are discussed in Chapter 4 of this report. The matter would also be covered by the EA in their role as competent authority when assessing applications for any changes to the environmental permit or abstraction licence for the existing Drax power station.

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

- 3.5.16 Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (Industrial Emissions Directive (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

² <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:02000L0060-20090625>

2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (the Large Combustion Plant Directive), into a single legislative instrument to improve the permitting, compliance and enforcement regimes adopted by Member States.

3.5.17 The Large Combustion Plant Directive and IPPC Directive are implemented in the UK by the Environmental Permitting (England and Wales) Regulations 2010 (the Environmental Permitting Regulations). These Regulations seek to provide 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.

3.5.18 The EA would control and regulate the Project with respect to the emissions to air through an Environmental Permit that will be required for the Project, under the Environmental Permitting Regulations. The Environmental Permit would include specific emission limit values to apply to the Project for the relevant pollutants considered within the IED. These Regulations are discussed in Chapter 4 of this report.

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

3.5.19 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 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.

3.5.20 The Air Quality Standards Regulations 2010 give effect, in England, to the Ambient Air Quality Directive. The relevance of these standards to this application is discussed in Chapter 4 of this report.

Directive 2009/31/EC of 23 April 2009 on the geological storage of carbon dioxide (as amended)

3.5.21 The CCS Directive amended Directive 2001/80/EC on the limitation of emissions of certain pollutants from large combustion plants (commonly known as the Large Combustion Plant Directive). 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.

- 3.5.22 The assessment of whether these conditions are met is to be submitted to the relevant competent authority which 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.
- 3.5.23 The CCR (Electricity Generating Stations) Regulations 2013 require the same conditions to be met in electricity generating stations. The SoS may not issue a DCO for a station over 300MW output unless the above conditions are met.
- 3.5.24 The CCS Directive and the above Regulations apply to this Project since it for CCS development and would be a generating station of the above the minimum output. As such it also fulfils the requirements for CCR. This issue is addressed further in Chapter 4 of this report.

3.6 OTHER LEGAL AND POLICY PROVISIONS

Other National policy and legislation

- 3.6.1 There have been a number of Government policy statements on energy including: the Energy White Paper: Meeting the Challenge (May 2007); UK Low Carbon Transition plan, National Strategy for Climate and Energy (July 2009); and, Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011). This is dealt with in Chapter 4 of this report, in terms of the need for new generating capacity.

The Wildlife and Countryside Act 1981 (as amended)

- 3.6.2 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, NE). The Act also contains measures for the protection and management of SSSIs.
- 3.6.3 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species license will be required from NE.
- 3.6.4 This has relevance to consideration of impacts of the proposal on SSSIs and on protected species and habitats and is discussed in Chapter 4 of this report.

Natural Environment and Rural Communities Act 2006

3.6.5 The Natural Environment and Rural Communities Act 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.

3.6.6 This is of general relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development, as discussed in Chapter 4 of this report.

3.7 TRANSBOUNDARY EFFECTS

3.7.1 Under Regulation 24 of the Infrastructure Planning (EIA) Regulations 2009 (EIA Regulations) and on the basis of the information available from the applicant, the screening carried out by the Planning Inspectorate on behalf of the SoS is not of the view that the proposed development is likely to have significant effects on the environment in another European Economic Area State [OD-001].

3.7.2 In reaching this view the SoS has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Transboundary issue consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary. I agree with this conclusion.

3.8 LOCAL IMPACT REPORTS

3.8.1 A LIR has been produced jointly by SDC and NYCC [REP1-056]. The principal matters raised in the LIR are:

- Landscape and visual impact
- Ecology
- Flood risk and hydrology
- Highways and transportation, including public rights of way
- Noise and vibration
- Air quality
- Historic environment
- Employment/skills
- Waste/ minerals.

3.8.2 I have paid full regard to the LIR in my examination of the application, including at the ISHs on environmental impact matters, which included consideration of many of the matters referred to in the LIR. The principal issues raised in the LIRs are considered in Chapter 4 of this report.

3.9 RELEVANT DEVELOPMENT PLAN AND OTHER LOCAL POLICIES

3.9.1 Paragraph 4.1.5 of NPS EN-1 indicates that the decision-maker may consider Development plans or other documents in the Local Development Framework both important and relevant to their consideration of the application. However the main policies for NSIPs are set out in the NPSs and, where there is any conflict between these sets of documents, policies in the NPSs override those in the Development plan. As the development is in England, I have considered the relevant Local Development plans.

3.9.2 The site lies entirely within the administrative boundary of SDC, which in turn lies within the county boundary of North Yorkshire. The current development plan which covers the area has been produced by SDC, which comprises the Selby District Core Strategy (SDCS) Local Plan adopted in 2013, and those policies in the Selby District Local Plan (SDLP) adopted in 2005, which were saved by the direction of the SoS and which have not been superseded by the Core Strategy.

3.9.3 In its joint LIR [REP1-056] SDC and NYCC identified the principal strategic policies relevant to the proposal. These were similar to those identified by the Applicant in their Planning Statement [APP-030]. They are:

- Policy SP1 - sets out the presumption in favour of sustainable development, in accordance with the Framework
- Policy SP2 - sets out the spatial development strategy for the District
- Policy SP13 - covers the scale and distribution of economic growth
- Policy SP15 - relates to sustainable development and climate change, including energy efficiency and consumption in development, sustainable design and construction, biodiversity resilience and landscaping, sustainable transport and travel
- Policy SP16 - covers improving resource efficiency and policy
- Policy SP17 - covers low carbon and renewable energy
- Policy SP18 - aims to protect and enhance the environment, including safeguarding and, where possible, enhancing the historic and natural environment; the stewardship of wildlife; increasing Green Infrastructure; protecting and enhancing locally distinctive landscapes, public rights of way and access; increasing biodiversity; the prevention of pollution; sustainable development in terms of resource use; and, steering development to areas of least agricultural and environmental value
- Policy SP19 - requires a high quality of design

3.9.4 A number of policies have been saved from the SDLP, adopted in 2005 and the LIR identifies the following relevant policies therein as:

- Policy ENV 1 - sets criteria for good quality development
- Policy ENV 2 - aims to prevent development that would cause noise, nuisance, contamination or pollution

- Policy ENV 3 - specifically covers light pollution
- Policy ENV 4 - covers protection from hazardous substances
- Policy ENV 9 - covers sites of importance for nature conservation
- Policies ENV 27 - aims to protect Scheduled Ancient Monuments
- Policy ENV 28 - aims to protect other archaeological sites
- Policy EMP10 - covers additional industrial development at Drax and Eggborough power stations.
- Policy T1 - requires development to be well located in respect of the existing highway network
- Policy T2 - covers access to roads
- Policy T8 - aims to protect existing public rights of way.

3.9.5 A number of other local policies are listed in the LIR, mainly covering landscape and nature conservation. They include the Leeds City Region - Green Infrastructure Strategy 2010, which is discussed in the landscape and visual impact section in Chapter 4 of this report. No other local policies were drawn to my attention by IPs.

3.10 NATIONAL PLANNING POLICY FRAMEWORK

3.10.1 The National Planning Policy Framework (NPPF), published in 2012, sets out the Government's planning policies for England. However, paragraph 3 of that document states that it does not contain specific policies for NSIPs. This type of development is determined in accordance with the PA2008 and the policies set out in the relevant NPSs. However, the NPPF contains policy on flood risk, referred to in Chapter 4 of this report, which is identified as important and relevant throughout the NPS.

3.10.2 On 6 March 2014 national planning practice guidance (NPPG) was published. The guidance supports the NPPF and is designed to provide information on the practical application of policy. It includes more details on assessing flood risk, referred to in Chapter 4 of this report.

3.11 THE SECRETARY OF STATE'S POWER TO MAKE A DCO

3.11.1 I need to consider whether changes to the application made during the course of the Examination mean that the application has changed to the point where it is a different application and whether the SoS would have power therefore under s114 of the PA2008 to make a DCO having regard to the development consent applied for by the Applicant.

3.11.2 The SoS will be aware of paragraphs 109-155 of the guidance dated March 2014, Planning Act 2008: Guidance for the examinations of applications for development consent, which sets out the approach to be taken by the ExA in considering any proposed material changes to an application.

3.11.3 The SoS may wish to take into account my view that the nature and scope of the application did not materially change during the course of the Examination to such a degree that by the close of the Examination

it represented a different application. There were no representations received to suggest otherwise.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

4.1.1 At the start of the examination and following the PM, I set out my assessment of the principal issues arising from the application based on the application documents and the relevant representations received at that time [RR-001 to RR-015]. These are set out below in alphabetical order:-

Air quality, including issues relating to:

- The impact on air quality from both the construction and operational phases.

Biodiversity and habitats, including issues relating to:

- The impact on habitats and biodiversity, including fisheries; and,
- Mitigation and enhancement measures.

Compulsory acquisition, including issues relating to:

- The requirement for the powers sought and the need to establish a compelling case in the public interest;
- Protective provisions
- Temporary use of agricultural land; and,
- Financial arrangements.

Design, landscape and visual impact, including issues related to:

- The design concept and process;
- Landscape and visual impact; and,
- Landscaping and screening.

Economic and social impacts, including issues relating to:

- The impact on the local economy; and,
- The impact on local regeneration.

Flood risk, including issues relating to:

- The impact of the proposed development on flood risk; and,
- The flood resilience of the proposed buildings and infrastructure.

Noise, vibration and dust, including issues relating to:

- The impact during construction and operation.

Operational issues, including issues relating to:

- Implications of differing operational scenarios;
- Carbon capture and storage; and,

- Potential use of CHP.

Soils and geology, including issues relating to:

- Contaminated land.

Traffic and transport, including issues relating to:

- Traffic movement and routing;
- Use of rail; and,
- Potential use of the River Ouse.

Water quality and resources, including issues relating to:

- The impact of construction on water quality; and,
- The impact of operation on water resources and water quality.

- 4.1.2 These issues formed the basis for the examination of the application. These matters and all other policy implications have been addressed in this report.

ISSUES ARISING FROM WRITTEN AND ORAL SUBMISSIONS

- 4.1.3 Many of the issues in the written submissions reflect those in the LIR, discussed above. A total of 15 Relevant Representations were received in the pre-examination period, which informed the initial identification of principal issues and my FWQ.

- 4.1.4 At the PM the Applicant queried the need for the principal issues to include fisheries, under biodiversity and habitats. NYCC wanted to ensure that minerals/ waste would remain as part of the examination as comments on clay extraction and peat storage would form part of the LIR. I agreed to re-consider the issue of fisheries after the PM. However, at this time, my FWQ had not been issued and these would include questions on water resources and water quality, which might have had implications for habitats, including fisheries. Subsequently, it became clear that this issue would be assessed by the EA as part of any variation to the existing environmental permit and it was not necessary to progress this matter any further.

- 4.1.5 All other written and oral representations are addressed in the relevant sections of this Chapter, below.

ISSUES ARISING IN LOCAL IMPACT REPORTS

- 4.1.6 The principal issues arising in the LIR [REP1-056] are listed above and discussed in the relevant sections below. The Applicant was the only commentator on the LIR, in which SDC and NYCC are broadly supportive of the proposal. By the end of the examination, there was a high level of agreement between the Applicant and the respective Councils on the matters included in the LIR, subject to additional requirements. The main exception, on which no agreement was reached being operational noise, landscape and visual impact, peat

storage and destination, the location and details of temporary soil store and the timing and validation of applications under DCO Schedule 11. These are discussed in the relevant sections below.

CONFORMITY WITH LOCAL PLAN POLICIES

- 4.1.7 The conclusions from the SDC and NYCC LIR [REP1-056] and their SoCG with the applicant [REP9-003] are that, with adequate mitigation, the proposal would have limited adverse effects. However, in the view of the local authorities, the proposal would not comply with policies SP13D, SP15B, SP17Ci, SP18, SP19 of the SCS, ENV1 and EMP10 of the SDLP and Leeds City Region Green Infrastructure (GI) Strategy in terms of landscape and policies SP13D, SP15, SP17, SP19 of the SCS and ENV1 and ENV2 of the SDLP in terms of noise. These issues are discussed in this chapter, below, and the planning balance of benefits against harm as a result of the proposal is set out in Chapter 8.

THE PRINCIPLE OF, AND NEED FOR, THE DEVELOPMENT

- 4.1.8 The proposed development would be a coal-fired generating station with CCS facilities. The need for the development is covered in NPS EN-1, section 3.1, which states that such applications should be assessed on the basis that the Government has demonstrated that there is a need for new energy generation and that substantial weight should be given to its contribution to satisfying this need as a generating station. Paragraphs 3.6.1 and 3.6.2 of the same NPS state that there is a need for a mix of energy sources including fossil fuels to meet demand in a flexible manner, which will help in the transition to a low-carbon economy.
- 4.1.9 The Project is being supported by the UK Government as part of its CCS commercialisation programme, a key component of the 2012 UK CCS Roadmap, which sets out the Government's strategy for developing the CCS industry. The Project is intended to demonstrate the viability of new fossil fuel electricity generating plant incorporating CCS technology on a commercial scale. In addition, it would support the NGCL Yorkshire and Humber CCS cross-country pipeline, a separate NSIP, which would transport CO₂ captured from the combustion process for permanent storage beneath the North Sea in geological structures. The pipeline has capacity for use by other power generators and industrial operators in the region.
- 4.1.10 Paragraphs 3.6.4 - 3.6.5 of EN-1 state that the demonstration projects, like White Rose, are a priority for UK energy policy and decision-makers should take into account the importance the Government places on demonstrating CCS, in considering applications for the consent of CCS projects and associated infrastructure. Furthermore, this project would be a CCS demonstration project for which paragraph 3.6.8 of EN-1 states there is "an urgent need".

- 4.1.11 Two representations were received about the need for the project. Kirkwood Stewart Young [RR-004 and AS-014] questioned whether the proposal was necessary and whether the existing power station could be converted to demonstrate CCS. The Coal Action Network [RR-008] had concerns about the project continuing to tie the UK into coal mining, especially opencast, with environmental issues for mining and coal-fired power stations. They queried the need to store CO₂ under the sea as a waste product, which might eventually have implications for the marine environment and global warming.
- 4.1.12 However, the continued role and need for the generation of power from fossil fuels, including coal, in maintaining energy security has been set out in paragraphs 3.6.1 and 3.6.2 of EN-1. The need for the demonstration projects for CCS is set out in paragraphs 3.6.4, 3.6.5 and 3.6.8 of EN-1. In their response to my FWQ, the Applicant explained that the age of the Drax coal-fired power plant and its likely lifetime, its lower efficiency and higher production of CO₂ compared to a modern coal-fired plant and the lack of space for the necessary additional processing units within the existing Power Station layout, means that the existing power station could not be retrofitted with CCS and used as a demonstration project. Instead, a new power station is required to test the technology in a commercial context.

CONFORMITY WITH NPS AND OTHER KEY POLICY STATEMENTS

- 4.1.13 As an NSIP for fossil-fuelled electricity generating infrastructure, NPS EN-2 also applies to this application. The impacts of the project and general conformity with these NPSs are discussed in the sections below. Since the proposal would provide a grid connection, NPS EN-5 is also relevant.
- 4.1.14 The financial viability of the scheme, taking into account paragraph 4.1.9 of EN-1 is considered in Chapter 7 of this report. The appropriateness of the development consent agreement, as required by paragraph 4.1.8 of EN-1 are considered in the relevant sections on mitigation below and in Chapter 8.

ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 4.1.15 During the course of the examination the Applicant provided other information relating to the original ES. The other information included a Traffic Sensitivity Test [APP-079] section, to reflect fully the traffic implications of the proposal in terms of potential biomass delivery [APP-080], and the addition of a figure in the LVIA [APP-082, Volume 2 Chapter H], to show the position of the photomontage/ wireframe locations. I am of the view that, overall, the ES and other information submitted is sufficient for the SoS to make an informed decision which is in compliance with EIA Regulations, as set out in section 4.2 of EN-1.

- 4.1.16 Section 4.3.1 of EN-1 requires the consideration of whether a proposal could have a significant effect on a European site or one that is similarly protected by policy. This is discussed in Chapters 4 and 5 of this report. Paragraph 4.4.2 of EN-1 requires alternatives to be considered as part of the ES. Section 5.8 of the ES covers the alternatives examined for the generating station [APP-035]. I consider that the examination of alternatives has been addressed adequately and the requirements of EN-1 and the EIA Regulations are met. A series of mitigation measures have been proposed in the ES, as set out in the Schedule of Mitigation Annex [REP1-034] submitted for Deadline I and subsequently updated for Deadline V [REP5-008] and Deadline VII [REP7-007] during the examination. In addition the ES contains a draft Construction Environmental Management Plan (CEMP) [APP-055], which establishes the framework for the agreement of the CEMP, which would mitigate the adverse effects of construction, and be secured by Requirement (R)18 of the recommended DCO.
- 4.1.17 In my view, the ES and other environmental information submitted relating to it are generally adequate to assess the proposal.

4.2 DESIGN

- 4.2.1 The design process is described in the Planning Statement [APP-030], the Design and Access Statement (DAS) [APP-031] and the ES [APP-034 to APP-065], as updated/amended by chapters/sections on Traffic Sensitivity Test [APP-079], the LVIA [APP-082], HRA Report [REP1-023] and the Schedule of Mitigation [REP7-007]. The DAS sets out the size of the buildings in terms of the maximum building and structure dimensions and footprints in Tables 5.1 and 7.1. The DCO application is accompanied by indicative layouts for the site, together with indicative elevations and sections. Photomontages showing the scale of the building envelopes have been submitted in the revised LVIA [APP-082], as included in the ES.
- 4.2.2 The selection of the main site has mainly been influenced by the proximity of the site to the existing power station infrastructure at Drax. In addition, the site already has an extant consent for power generation and there is general support for the proposal in saved policy EMP 10 of the SDLP. Any other sites would have required a larger footprint, due to a lack of synergies, and would have been more expensive to develop. As such, the Applicant has not sought to evaluate other sites and EN-1, paragraphs 4.4.1 and 4.4.2, notes that there is no general requirement to consider alternatives.
- 4.2.3 The proposed generating station would be located immediately adjacent to the existing power station on flat land within the River Ouse valley. The illustrative designs for the buildings and the maximum parameters would be fixed under R4, have had regard to the existing power station development in terms of the siting of its components. Following consultation, changes were made to the design of the proposal, including the administration building, air separation units, the enclosure of conveyors and the provision of screen planting

for Drax Abbey. None of the larger buildings would shade existing residential property, which was a concern of one of the IPs, Andrew Wilson [RR-007], due to the distance of them from residential property. The design of the power plant itself largely reflects its function and the internal layout is specific and largely dictated by the process and its relationship with the shared elements of the existing power station infrastructure.

- 4.2.4 Elements such as stack height are determined through the air quality modelling. NPS EN-1 paragraph 5.2.4 says that the ExA need not be concerned with stack height optimisation in respect of air emissions, although the impact on landscape and amenity will be a consideration. However, the location of the proposed buildings, close to those of the larger ones of the existing power station which are a dominant feature in the landscape, largely consolidates the view of the industrial area from many of the viewpoints shown in the ES.
- 4.2.5 The detailed design of the proposal, including building design, external appearance, landscaping and means of enclosure would be determined at a later stage and would be subject to control under R4, 5, 6 and 11 of the recommended DCO. The Design Council has been consulted on the application, as recommended in EN-1, paragraph 4.5.5, but did not make any comments that would require a change to the design of the proposal. The context of the development has been appraised through the revised LVIA [APP-082], discussed below, and the indicative landscape and biodiversity framework plans [REP6-003 and REP6-004]. An explanation of the changes made to the indicative landscaping and biodiversity framework plans has been provided in documents REP6-006.

Conclusions on Design

- 4.2.6 Paragraph 4.5.1 of EN-1 requires new energy development to be '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 aesthetic as far as possible.' The siting of the proposal would be sensitive to place, as recognised in saved policy EMP10 of SDLP. The illustrative plans and elevations indicate that, as far as possible with these types of functional buildings, good aesthetics would be shown. Details of the design of the proposal are yet to be determined. However, the detailed design, external appearance and landscaping of the proposed buildings would be secured through R4, 5, 6 and 11, which would be scrutinised by SDC. Therefore I consider that the applicant has followed the principles for design guidance set out in section 4.5 of EN-1.

4.3 AIR QUALITY AND EMISSIONS

- 4.3.1 The generating station would require a variation to the existing Environmental Permit for the Drax site from the EA under the Environmental Permitting (England and Wales) Regulations 2010 (as

amended). It would use some shared facilities with the existing power station, for example, the same water discharge and abstraction arrangements, the rail transport system for coal and storage for both coal and biomass. If a variation to the permit were issued by the EA this would set emission limits, to ensure that the power plant would comply with the limits in force at the time of issue. These limits would be the main control on emissions from within the site boundary during operations. A variation to the permit including the proposed generating station has been applied for and was confirmed to be "duly made" by the EA on 25 June 2015. At this stage, the EA have not identified any specific matters which would preclude a varied permit being issued.

- 4.3.2 The operational impacts of the proposal were assessed using the Atmospheric Dispersion Modelling System (version 5). The model is a means of predicting impacts on air quality and accepted as such by the EA. The model is based on the proposal being a coal-fired power station, which when generating in air-mode would represent abnormal operation and a worst case scenario, in terms of emissions to air. The Emissions Performance Standard (EPS) requirements under the Energy Act 2013 would mean that this mode of operation could only be for 3 years and after that could only be 56% of the time. The technology proposed could be also be co-fired with biomass but in parts of the ES, for example in the transport sensitivity study, the proposed technology is stated have a theoretical limit of 15% biomass for co-firing.
- 4.3.3 The ES Emissions to Atmosphere Technical Report [APP-037] examined emissions in both operating modes: the oxy-mode, which would be the usual operating mode, and the air-mode, which would operate during start-up, shut-down or when the CO₂ pipeline was not available. The report concluded that, in oxy-mode, there are predicted to be negligible impacts on air quality at sensitive human receptors for the majority of pollutants, with the exception of a minor adverse effect from chromium (VI) and arsenic. When considered under H1 guidance, the impact of the arsenic emission is also considered acceptable. In terms of sensitive habitats there would be negligible impacts for all pollutants and effects have been assessed as not significant.
- 4.3.4 In air-mode, there are also predicted to be negligible impacts on air quality for sensitive human receptors for the majority of pollutants, with the exception of sulphur dioxide and arsenic, with minor adverse effects, and chromium (VI), with slight adverse effects. It also examined the effects of both oxy-mode and air-mode with auxiliary boiler start-up combined. In both of these modes, the results were acceptable for human receptors and there were no significant effects for deposition on habitats. However, for air-mode in combination with auxiliary boiler start-up, there would be unacceptable impacts in terms of deposition on sensitive habitats, with a process contribution of over 1% and a predicted environmental concentration of over 70% of the critical load for annual mean sulphur dioxide and acid deposition. This

was discounted in the ES due to the time-limits which would apply in the EPS [APP-037].

- 4.3.5 The prospect of unrestricted air-mode operation (the worst case scenario and the upper limit of the Rochdale envelope) in the first 3 years allowed by EPS and 56% thereafter and the impact on habitats was discussed at length during the pre-application stage. The Applicant initially submitted a No Significant Effects Report in respect of HRA matters, as detailed in Chapter 5 of this report. Concerns were raised by PINS and NE about the potentially significant impact in the worst case scenario on 3 sites: River Derwent SAC, Skipwith Common SAC and Thorne Moor SAC. Subsequently, this matter was resolved by the Applicant submitting Stage 2 matrices for the sites, showing that there would be no impact on the integrity of these sites. The output of the Stage 2 matrices was agreed by the Applicant and NE, as set out in their SoCG [REP4-006].
- 4.3.6 In addition to the impact of emissions from the operational plant, emissions from transport and general dust were also assessed. The conclusions with the potential worst case scenarios for construction and operation indicated that there would be no significant effect as a result of NO₂, PM₁₀ and PM_{2.5} emissions. The sensitivity analysis carried out following a review of the traffic arising from biomass deliveries by road, within the Traffic Sensitivity Test [APP-079], resulted in slightly higher levels of HGV traffic, which showed that the increased level of HGV traffic still resulted in there being no significant effect on identified receptors. In any event there would be some mitigation in the form of a construction traffic routing and travel plan required by R19 and an operational traffic routing and travel plan required by R24 of the recommended DCO.
- 4.3.7 In terms of dust emissions, the ES assesses the overall risks from dust as being mainly in the range of low to negligible, with only demolition generating medium risk in areas of high sensitivity and appropriate measures have been put forward to mitigate any risk. During the construction period a CEMP, including a scheme for the control of dust, would be required under R18. Following comments in the LIR [REP1-056] from SDC, this requirement was amended to add measures for undertaking any corrective actions following environmental monitoring and reporting during construction. A similar environmental management plan would also likely be required during the decommissioning and restoration periods under R27. During the operational period, dust would be controlled through the use of construction industry best practice methods, including the design of the processes, for example, enclosed conveyors for coal and the use of buildings for the processing and handling of bottom ash, as well as dust suppression. These matters would be enforced through the provisions of the environmental permit. Coal and biomass deliveries would be to existing storage facilities on the existing power station site. Any potential dust controls would be covered by existing environmental permit.

- 4.3.8 One IP, Andrew Wilson [RR-007], required confirmation that there would be no emissions, including steam, from the proposed generating station. Whilst there would be emissions from the generating station, they would be closely controlled by the environmental permit to the levels set at the time of the permit, which would be in keeping with national and European standards. The design of the generating station, which has a hybrid cooling system, has towers only 25m high; reducing the height of the plumes and the process would reduce the occurrence of visible plumes to only 3% of the daylight hours per year. As such it would not have an adverse cumulative effect with the steam emissions from the existing Drax generating station on the cloud build-up and shading of neighbouring areas.
- 4.3.9 Emissions of greenhouse gases are dealt with under the section in this chapter on carbon capture and storage.

Conclusions on Air Quality and Emissions

- 4.3.10 I have considered the analysis of the impact of the proposal on air quality by the Applicant and the measures identified to mitigate the impact of emissions to air, including the CEMP, which would be the subject of R18 of the recommended DCO.
- 4.3.11 The proposed power plant would be regulated through a variation to the existing environmental permit for Drax which has been applied for, but not yet determined by, the EA. In turn, the EA have signed a SoCG with the Applicant [REP5-010] which indicates what will be required in order for a variation to the existing permit. NPS EN-1 in paragraph 4.10.3 states that the ExA should work on the assumption that the relevant pollution control regime would be properly applied and enforced by the relevant regulator. At this stage, without prejudice to the EA's consideration of the permit, there is nothing to suggest that a permit would not be granted for the plant, which would be capable of controlling emissions to air from the proposed generating station. Monitoring of emissions would take place under the permitting regime. Dust control regimes would mitigate impact both during the construction, decommissioning and operational stages in accordance with paragraph 5.6.11 of NPS EN-1.

4.4 FUELS, COMBUSTION AND WASTE IMPACTS/ MANAGEMENT

- 4.4.1 The application is for a coal-fired power station, although the application also allows the co-firing of biomass, which would come from a variety of sources. With the technology intended to be used for carbon capture and storage, the ES has adopted the use of the theoretical maximum of 15% biomass where the use of biomass impacts on the worst case environmental effects, for example in the traffic sensitivity test. Coal mainly arrives by a merry-go-round rail system and the transport of biomass is likely to be by HGV, which is discussed further under the transport section of this Chapter.

- 4.4.2 Coal storage is currently in an open area on the existing power station site and the storage of the biomass would be in the existing enclosed biomass silos, close to the coal storage area. Enclosed conveyors would be used on similar routes for both coal and biomass from the storage areas to the coal/ biomass mills within the proposed generating station to be fed into the combustion system to produce electricity. The project has been designed to burn either coal or a coal/biomass blend in an oxygen-rich atmosphere, using an air separation unit to capture oxygen and a gas processing unit to capture carbon dioxide. These two units are additional to the conventional coal-fired combustion process and are integral to the design of the proposed plant.
- 4.4.3 In addition to the emissions to air already assessed, there would be solid residues from the process. Sections 5.14 of EN-1 and 2.9 of EN-2 require the sustainable management of waste from generating stations. The main solid waste products from the process would be ash, gypsum and desulphurisation waste treatment plant residues. These wastes have had planning consent for their deposition on Barlow Mound for many years and there would be sufficient space for further disposal there.
- 4.4.4 In response to my SWQ 3.3 [REP5-011], the Applicant supplied statistics on current and projected levels of waste, showing decreasing amounts of waste being generated due to increased levels of biomass being burned at the existing power station and increased amounts of bottom ash being sold for use elsewhere, rather than being landfilled. The Applicant says that it is intended to continue to sell, rather than landfill, ash waste from the proposal which would divert waste up the waste hierarchy in accordance with EN-1, paragraph 5.14.2.
- 4.4.5 During the construction and operational periods, waste would be controlled through a site waste management plan for each period, secured through R26 of the recommended DCO. The control of waste would also form part of the environmental permit, with conditions on the quantities and types of waste to be deposited. Similar controls on waste management during the decommissioning period would be secured through R27 of the recommended DCO. No representations were made on the Applicant's conclusions on waste management.
- 4.4.6 On other waste matters concerning the application site, during construction works at the existing power station in the 1990s, peat was removed to enable construction works and stored on part of the application site. NYCC, as waste/ minerals planning authority, consider the peat to be a valuable resource for eventual restoration works, including Barlow Mound. Planning permission for the continued storage of the peat has now expired and the Applicant has not yet agreed with NYCC on the destination of the peat. This is a matter which would need to be agreed between the Applicant and NYCC as the minerals and waste authority prior to construction taking place but would not need any specific measures in the DCO.

4.4.7 Therefore, in terms of waste issues, it has been shown that there would be adequate provision for the management of waste and it would comply with section 5.14 of EN-1 and section 2.9 of EN-2.

4.5 CARBON CAPTURE AND STORAGE

4.5.1 Paragraph 3.6.5 of EN-1 states that the UK is leading international efforts on CCS, including commercial scale generating stations to demonstrate the full CCS chain, which is a priority for UK energy policy. Paragraph 3.6.8 states that the need for this type of project is urgent. Paragraphs 4.7.1 and 4.7.2 explain the process of CCS which allows 90% of CO₂ to be captured and stored, allowing fossil fuels to continue to contribute to a low carbon energy mix. The technology requires a chain of a generating station which captures the CO₂, transport via a pipeline and then underground storage in suitable geological structures or former gas and oil fields. Paragraph 4.7.5 of EN-1 states that any generating station as part of the CCS chain would still need to meet the Government's EPS and in paragraph 4.7.6 it states that it is likely that most CCS demonstration projects would require funding support.

4.5.2 The White Rose project is one of the demonstration projects for CCS. It would generate electricity through an oxy-fuel process, described above, which would be able to capture 90% of the CO₂ produced. This would then be transported via the Yorkshire and Humberside CCS CO₂ pipeline, which is the subject of another NSIP application, and stored in former gas/oil fields under the North Sea. The storage facility would be the subject of another application to the MMO.

4.5.3 No extra space would need to be reserved on site for CCS, since it forms part of this DCO application. However, the project would be dependent on consents being obtained for the transport and storage elements of the proposal, in R30, although there is nothing at this stage to suggest that consent would not be forthcoming. The project would need funding support from the Government's CCS Commercialisation Programme. In response to my FWQ 1.3 [REP1-005], the Applicant explained that the early Front End Engineering and Design had been sourced from Government (DECC) and a variety of other sources. In response to my FWQ 1.7 [REP1-005], the Applicant stated that the construction and operation of the proposal was heavily dependent on Government funding, in that it would encourage other funding bodies to invest. However, paragraph 4.7.6 of EN-1 states that any DCO decision for a coal-fired generating station should be taken independent of decisions on the allocation of funding for CCS demonstration. The EA, in REP2-013, confirms that there are no foreseeable barriers to CCS, in terms of the technology proposed.

4.5.4 The Applicant has carried out a Greenhouse Gas Assessment [APP-060] which examines the proposal's potential operational CO₂ emissions against EPS. The study concluded that, with the transport and storage system fully operational, the generating station would perform substantially better than the requirements of the EPS.

- 4.5.5 However, under certain scenarios, it would not comply. Should the transport and storage system not be in place, the station could not comply with the EPS. However, if necessary, there would be a 3-year exemption from the EPS process from the time at which the complete CCS chain was ready for use. In addition, compliance would not be achieved if the chain only operated for 35% of the time, if it were in capture mode for less than 30% of the year or if the capture rate were to fall below 31.5%. If the biomass rate were increased from 0%, as the base rate, then it would continue to comply in such scenarios.
- 4.5.6 There are risks if parts of the CCS chain were not fully functioning and in such circumstances that might result in reduced operational hours or the greater use of biomass. Nevertheless, if the generating station is built and run with the County Council's transport and storage scheme in place, then it would comply with the EPS, as set out in EN-1, section 4.7. In any event, paragraph 4.7.5 confirms that compliance with EPS is not part of the DCO consenting process.

4.6 BIODIVERSITY AND GEOLOGICAL CONSERVATION

Designated Sites

- 4.6.1 The reports on ecology are set out in Chapter I - Ecology Technical Report of the ES [APP-050] and the supporting annexes [APP-051 to APP-053]. Issues relevant to the Habitats Regulations and the protection of European sites are addressed in Chapter 5 of this report.
- 4.6.2 In addition to the European sites, there are 10 SSSIs, 3 National Nature Reserves and 5 Local Nature Reserves within 15km of the site. There are a further 5 non-designated sites, 4 Sites of Importance for Nature Conservation and 1 candidate Local Wildlife Site within 2km of the proposed site. Apart from those sites examined under the Habitats regulations, the other designated and non-designated sites were screened out. The overall approach to the effects on designated sites was agreed by NE, in their SoCG [REP4-006].
- 4.6.3 There are no geological sites of interest that would be affected by the proposal.

Ecological Surveys

- 4.6.4 As part of their relevant representations, YWT [RR-010], requested the surveys undertaken by North and East Yorkshire Ecology Data Centre and Whitcher Wildlife Ltd Protected Species Survey, to be provided since their results were reported in the ES. The Applicant offered to provide these surveys and also elaborated on the sources of other survey material, including those for the EIA on other recent adjacent projects, Lytag and the Ouse Renewable Energy Project [REP5-009].
- 4.6.5 In addition to the survey material submitted on badgers with the application [APP-052 and APP-053], further surveys and additional material was required by NE in order to inform the draft Badger

Licence Method Statement, as set out in their Relevant Representation [RR-014] and subsequent WR [REP1-054]. This had not been resolved by the time the SoCG between NE and the Applicant was signed [REP4-006]. However, on 14 August 2015, NE wrote to the Applicant to say that the material submitted in respect of a draft licence would be sufficient for them to say that there would be "no impediment" to the issuing of a licence in due course [REP6-010].

Habitats

- 4.6.6 The site contains some Natural Environment Research Council Priority Habitats and Local Biodiversity Action plan habitats, including reed bed, hedgerow, arable farmland, lakes and ponds and rivers, streams and ditches. Some areas would be permanently lost through development and others would be temporarily affected, for example, through use as laydown areas. Representations were made on habitat loss by YWT [RR-010], and pursued in their response [REP1-061] to my FWQ. The EA [RR-015 and REP1-049] and NYCC in their LIR [REP1-056] also made representations on this matter.
- 4.6.7 In mitigation the Applicant put forward the use of the new surface water attenuation pond, with marginal vegetation and the management of the effects on-site through the CEMP (R18) and the Biodiversity Mitigation and Management plan (R16). R12, on surface water management and R14, covering the treatment of contaminated land, would help to protect habitats, together with the control of emissions through the environmental permit. Nevertheless, in their WR, the EA [REP1-049] stated that there would still be a deficit of about 1.26ha of habitat, even assuming that the surface water attenuation pond was fully taken in mitigation. YWT's view was that it should only be regarded as partial mitigation [REP1-061]. In addition, both YWT and the EA requested that biodiversity offsetting should be considered using DEFRA methodology.
- 4.6.8 In order to address the minor residual effects of the proposal, further discussions were held with YWT and the EA. Agreement with these bodies on the mitigation required was reached, as stated in the signed SoCG with YWT [REP5-009]. This states that, although the attenuation pond on-site could offer some mitigation, off-site provision was also required. The sites selected for off-site mitigation were Skerne Wetlands, including improvements to ponds, grassland, a chalk stream and its feeder, and Barlow Common, including pond/wetland creation, public access and species specific provision for grass snake, amphibians and potentially water vole. A development consent agreement [REP7-011] has been signed by representatives of the Applicant, YWT and SDC, as the local planning authority, which will deliver the necessary mitigation, with which the SoS should be satisfied.

Protected Species

- 4.6.9 The survey material indicated that there are populations of protected species including bats, grass snakes, breeding and foraging birds, water vole, badger and invertebrates. The signed SoCG with NE [REP4-006] indicated that bats, European Protected Species, together with badgers and reptiles, which are nationally protected species, may be affected by the project. However, it was agreed by NE that, from the mitigation set out in the ES, there would be no adverse effects on bats and reptiles.
- 4.6.10 There would be no direct effect on bat roosts as there are no suitable features on the site or roosting activity in the trees locally, with one of the nearest roosting sites being Drax Abbey Farm for pipistrelle bats, which were a particular concern of Kirkwood Stewart Young [AS-014]. There would be some loss of foraging areas on site but peripheral habitat including fencing lines would retain areas of the highest use for these bats, including links between Drax Abbey Farm and Barlow Mound, mentioned in the LIR [REP1-056]. Any loss of habitat would be compensated for through provision of a mitigation area close to Carr Dyke, for bats foraging and commuting, and through the mitigation measures set out in the ES Mitigation Annex [REP7-007]. Light disturbance to sensitive species, such as bats, would be minimised through R8 and 9, which require schemes for external lighting during construction and operation of the proposed development.
- 4.6.11 The surveys showed a small population of grass snake on the site and there would be some permanent loss of its habitat. However, the grass snake is a mobile species and there is suitable alternative habitat nearby to which it would be likely to migrate and suitable habitat would remain close to Carr Dyke.
- 4.6.12 The ecological surveys show that areas used for foraging and breeding for bird species of importance in the local area would be lost temporarily or permanently, including areas used by Schedule 1 Birds, like peregrine falcon and barn owl, these birds being a concern of Kirkwood Stewart Young [AS-014]. Following construction, laydown areas would be restored and habitats would be retained wherever possible and enhanced in the area close to the Carr Dyke. A flood attenuation pond, with features to encourage wildlife would also be created. The peregrine falcon is thought to nest on the existing power station and the development is unlikely to be disturbed by similar development on the site. Known barn owl nesting sites are on Barlow Mound but there are no suitable nest sites on the site of the proposed development. As such, there would be little disturbance to nesting behaviour for barn owls.
- 4.6.13 The site and its surroundings are well used by badgers. In their relevant representation [RR-014], NE required further information on whether a 30m buffer zone could be established around a number of setts and, if not, the methods by which badgers would be excluded from these setts in relation to a draft badger licence application under

the Protection of Badgers Act 1992. Further survey work was undertaken in May and June 2015 with the provision of the further information to NE, which was able to issue a letter of "no impediment" to the granting of a licence [REP6-010], including replacement setts, if required. As this matter, which was the only outstanding issue following the signed SoCG with NE [REP4-006], has now been resolved, there are no objections remaining to the proposal on the basis of its impact on badgers.

- 4.6.14 A small colony of water vole is known to exist in the ditches around Barlow Mound but they would be sufficiently distant from the development not to be adversely affected by it. No evidence was found of Great Crested Newt, although there is a small colony of smooth newts which would be translocated if it is still present when construction starts. In response to my FWQ 6.4 [REP1-005], there is only one recorded spraint for otter on Carr Dyke and, since this would not indicate breeding or resting, no further investigation is necessary. There would be some permanent loss of habitat used by invertebrates, although it would not be critical to the presence of species of conservation interest, which in any event would benefit from the enhancement area proposed for birds and badgers.
- 4.6.15 The greatest effects on protected species would be during construction, before which pre-development surveys for European protected species under R17 of the recommended DCO would be required with any scheme for protection and mitigation to be agreed with NE. The CEMP, which would be produced under R18 of the recommended DCO, would be prepared in accordance with the principles of the ES and its mitigation annex and would provide protection during that period. A similar plan would need to be prepared for the decommissioning period under R27 of the recommended DCO.
- 4.6.16 Cumulative impacts on biodiversity and nature conservation have been assessed and considered mainly to arise in respect of air quality impacts of the projects listed in the ES. These have already been assessed above in section 4.3 of this Chapter.

Conclusions on Biodiversity and Geological Conservation

- 4.6.17 In terms of other protected sites, species and habitats, either it has been shown that there would be no significant effect or that mitigation would be applied to ensure adequate protection. This would comply with section 5.3.18 of NPS EN-1.

4.7 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS

- 4.7.1 The proposed development would have a main emissions stack a maximum of 120m high and an auxiliary boiler stack a maximum of 50m high, as set out in the DAS. The Civil Aviation Authority [RR-001] has advised that the taller stack would require a warning light, although this is a recommendation rather than a legal requirement.

R28 requires consultation with the Civil Aviation Authority on a proposed warning light and also the operation of cranes during construction, which would secure the provision of the light. R29 requires details needed by Defence Geographic Centre of the Ministry of Defence for aviation purposes to be provided before development commences. Therefore both civil and military aviation and defence interests would be met.

- 4.7.2 As such, with the above requirements in place, I consider that the proposal would be in accordance with paragraph 5.4 of EN-1 on civil and military aviation and defence interests.

4.8 CLIMATE CHANGE MITIGATION AND ADAPTION

- 4.8.1 The Applicant has carried out a Climate Change Risk Assessment as part of the application [APP-061] to inform the project's compliance with Government policy on climate change as expressed in EN-1, section 4.8. The Climate Change Risk Assessment was carried out in 2011 for the existing Drax operation, using the same criteria, and this was reviewed to cover this project.

- 4.8.2 The risks identified included flood risk, which is discussed separately below, but the Flood Risk Assessment (FRA) [APP-040] found that tidal flooding could be mitigated through raising the site level and that other flood risks such as fluvial and surface water flooding could be managed through sustainable drainage techniques and therefore any risk was very low. Higher ambient temperatures could affect performance and influence discharged water temperatures and these would need to be mitigated through discussion with the EA on permit matters. Similarly, the CO₂ capture process would be temperature dependent and its continuing design would need to take this into account. Higher wind speeds could cause risks to personnel but any increase would lead to reviews of existing safety procedures.

- 4.8.3 The benefits of CO₂ capture, which would have benefits both for the generating station and, if successful commercially, more widely have already been discussed in this Chapter.

- 4.8.4 As such, I consider that climate change mitigation and adaptation issues have been adequately assessed by the Applicant and meet the requirements of EN-1, paragraph 4.8 and EN-2, paragraph 2.3.13.

4.9 DUST AND OTHER POTENTIAL NUISANCE

- 4.9.1 The issue of dust has already been discussed under air quality, in addition to steam emissions. No representations were received during the examination on external lighting. In any event, control over the effects of external lighting during the construction and operational periods would be controlled through R8 and 9 respectively. The Applicant has prepared a Statement in respect of Statutory Nuisance under s79(1) of the Environment Protection Act 1990 and A8 of the recommended DCO contains a defence to claims under this Act.

4.9.2 Therefore I conclude that the proposed development would be in accordance with section 5.6 of EN-1.

4.10 FLOOD RISK

4.10.1 The site lies within tidal Flood Zones 2 and 3 of the River Ouse, but the area has 1 in 200 year flood defences, with a 1 in 200 year flood level of 4.52m above ordnance datum, including a climate change allowance. Since the site lies behind flood defences, the Applicant has also undertaken breach analysis of the flood defences. Other flood risk, including fluvial flooding from Carr Dyke, groundwater flooding, surface water flooding and reservoir flooding from Drax North Cooling Pond and Cawood Ings Wistow Lordship Reservoir was also considered in the FRA [APP-040].

4.10.2 The NPPF sets out general policies for development and flood risk and the 'Flood Risk and Coastal Change' section of the Government's NPPG gives further detail on this matter. The proposed development on the main site would be classified as 'essential infrastructure' according to Table 2, 'Flood Risk Vulnerability Classification', of the NPPG. Since the site is not allocated in a development plan, the proposal requires both a Sequential and Exception test. In the case of the Exception test, the note to Table 3 of the NPPG states that this should show that the development should provide wider benefit to the community and be designed and constructed to remain operational and safe in times of flood.

4.10.3 In terms of the Sequential Test, the site adjoins Drax power station where it can share access to the National Grid, good rail and road access for fuel and other raw materials, together with on-site infrastructure such as water supply and effluent control. This ensures that it would have a smaller environmental footprint and would be less expensive to develop in comparison to other sites. Therefore, I consider that the development passes the Sequential Test. In terms of the first part of the Exception Test, EN-1 sets out the national need for new energy generation and at a local level the development is supported by saved policy EMP10 of the SDLP, which supports development related to electricity generation at or close to Drax, and policy CS14 of the SDCS provides support for low carbon energy generation.

4.10.4 The FRA, with a breach analysis which was approved by the EA [Annex B, APP-040] showed that the site would be at flood risk from any breach with a level of 4.53m. No other flood risks were identified from other sources of flooding. Therefore, taking into account a freeboard of 600mm, a level of 5.13m above ordnance datum as the minimum floor level has been set to protect people and sensitive equipment. In addition, safe access and egress would be provided and an area of safe refuge above this level, together with an emergency plan. Surface water drainage from north of Carr Dyke would be stored in a storage basin and eventually discharged to the River Ouse, under the existing discharge consent. Surface water from south of Carr Dyke would be

discharged to Carr Dyke, with a storage basin also available, with the discharge rate to be agreed with the Shire Group Internal Drainage Board (IDB), which is the only relevant IDB in this respect. Detail of the surface water drainage and discharge arrangements would need to be submitted under R12.

- 4.10.5 The main mitigation for flood risk would be site-raising, through the construction of a platform under Work 1A of the DCO, on which to build the generating station. The platform would be built in the floodplain and would take up flood storage space but the EA have accepted that associated loss of floodplain storage is not considered significant and that the proposal would not significantly increase the risk or severity of flooding on neighbouring land. R13 fixes the minimum heights of the site, finished floor level and level for all sensitive equipment and requires a flood emergency response and contingency plan to be submitted and approved for both the construction and operational stages. As such, the proposal would also pass the second part of the Exception Test.
- 4.10.6 An application for the site-raising (Ref. 2015/0229/EIA) was granted planning permission by SDC on 15 June 2015 [REP3-006]. The Applicant had made this planning application in order to make progress on developing the site, so that the site-raising could be carried out in advance of a decision on the DCO, although it remains part of Work 1A.
- 4.10.7 R13 on flood risk mitigation was substantially revised at the request of the EA during the examination, as was R12 on surface water. The EA made a relevant representation [RR-015] agreeing the findings of the FRA and requesting changes to R12 and 13 of the DCO. In their SoCG [REP5-010] with the Applicant, the EA confirm that the wording of these requirements has been agreed and that they would ensure adequate control and mitigation for the subjects that they cover.
- 4.10.8 The only other representation received was from NYCC/ SDC in their LIR [REP1-056]. NYCC, as Lead Local Flood Authority, and SDC say that they have no concerns in terms of flood risk and surface water subject to the comments of the IDB. No comments were received from the IDB during the examination.

Conclusion on Flood Risk

- 4.10.9 The proposal would meet the tests in the NPPF and NPPG section on flood risk for development on the selected site and the design of the plant has taken into account the need for flood resilience measures. R12 and 13 would ensure that flood risk was adequately managed. Therefore the proposal would be in accordance with section 5.7 of NPS EN-1 on flood risk.

4.11 HAZARDOUS SUBSTANCES

- 4.11.1 In the list of other Consents and Licences [REP7-006], the Applicant states that they were granted consent for the storage of hazardous

substances by SDC under the Planning and Hazardous Substances Regulations 2009, as amended, on 7 May 2014.

4.12 HEALTH

- 4.12.1 The health aspects of the proposed development have not been addressed in a separate report but have been taken into account within the relevant sections of the ES, for example, on air quality. The results of the dispersion modelling of emissions to air on human health have been set out in the section on air quality in this Chapter, above. The impact on human health would also be covered by the environmental permit.
- 4.12.2 No representations have been made during the examination, with Public Health England having no comments on the requests for further information [AS-011]. During the consultation period, Public Health England found that the development's potential impacts had been adequately addressed but requested confirmation that the potential effects of electric and magnetic fields was assessed. The grid connection would mainly be by means of buried cable and therefore would not give rise to any additional significant sources of electro-magnetic fields [APP-030] and therefore would not need any further assessment.
- 4.12.3 Based on the implementation of the proposed mitigation secured in the dDCO [REP7-003], for the construction, operation and decommissioning of the Project, I consider that there is no evidence that suggests that the project will result in adverse human health impacts. Therefore the proposal would be in accordance with section 4.13 of EN-1.

4.13 HISTORIC ENVIRONMENT

- 4.13.1 The ES examines the impact of the proposal on the historic environment in Chapter G - Archaeology Technical Report [APP-045], using an inner study area, within the site boundary; a middle area within 1km of the boundary; and, an outer area of 5km of the boundary, principally concerned with the setting of heritage assets. In accordance with paragraph 5.8.8 of NPS EN-1, a description of the significance of the heritage assets affected by the Project the impact on their setting has been provided. Section 12 of the NPPF deals with conserving and enhancing the historic environment and requires great weight to be given to the conservation of a heritage asset, with greater weight given to more important assets.

Archaeology

- 4.13.2 The ES Chapter G [APP-045] states that there is potential for direct and indirect damage to heritage assets as a result of the development. Consultation has taken place with NYCC and HE on the scope of any investigation and it had been agreed that a programme of trial trench evaluation was carried out prior to the submission of the DCO. As there were issues with access and crops on the land concerned, NYCC

and HE agreed that this could be carried out after acceptance of the application. The work was carried out during the examination, commencing in June 2015. However, despite the Applicant's response to Q9.1 [REP1-005] of my FWQ, that the results would be available in August 2015, they have not been provided to the examination. Nevertheless, both HE and NYCC, who have seen the report, have agreed the approach with the Applicant [REP6-009 and REP9-003]. It is secured through R15, which requires a Written Scheme of Investigation, in accordance with the principles of the ES and its Mitigation Annex [APP-048]. The Applicant has also committed to submit the report as part of the information required to discharge R15 [REP6-001].

Other Heritage Assets

- 4.13.3 There are a number of designated heritage assets in the middle and outer study areas. The asset which would be subject to the greatest impact at both construction and operational stages would be Drax Priory, which is a Scheduled Monument (SM), which is noted in the ES of being of high importance. There are former fishponds associated with the monastic complex have been located nearby but these are not included within the boundary of the SM. However, the ES indicates that there would be little impact on these features.
- 4.13.4 The site of the SM adjoins construction laydown areas on two sides and the potential for damage to the buried remains of the SM is considered to be of potentially major significance. Since the laydown areas would be restored under R22, and there would be mitigation, in terms of landscaping to be provided between the Priory and the development, under R5(2)(a) the impact would be reduced to being of minor significance. Even though the ES states that the Priory is not signposted or visited often by members of the public, that does not reduce the importance of the asset.
- 4.13.5 Its setting has been changed over time through agricultural change and the industrial development at Drax but the proposed development would have a further, though minor, impact on the setting. In such cases, paragraph 134 of the NPPF says that the harm should be weighed against the public benefits of the proposal. Paragraph 3.3.15 of EN-1 states that there is an urgent need for new (and particularly low carbon) energy NSIPs to be brought forward as soon as possible. In this case, the need for the proposal, as a public and economic benefit, outweighs the minor harm to the setting of the SM.
- 4.13.6 There would be no significant impact on the other heritage assets and their settings in the middle and outer study areas. R5, which covers landscaping, has been amended to include more precise details on commencement and, together with R22, to provide a link to R16 on the biodiversity mitigation and management plan. R15 has been amended to include consultation with NYCC and HE on any written scheme of investigation.

Conclusions on historic environment

- 4.13.7 Based on the evidence put forward and the representations received, I consider that with the amended R5, 15 and 22 in place, there would be adequate mitigation to prevent any significant harm to the historic environment. Therefore I conclude that the proposal would comply with section 5.8 of EN-1.

4.14 LAND USE

- 4.14.1 The site, of about 116ha, includes land both within and adjacent to the operational boundary of the existing Drax power station site and includes part of the Barlow Mound, which is the waste disposal area for the existing power station, as shown on the Land plan [APP-073]. It is about 6km south-east of Selby town centre, about 8km north-west of Goole and about 2km from the nearest villages of Long Drax, to the north-east, and Barlow, to the north-west. The site (except areas within the Power Station and at Barlow Mound) comprises of land that has been used in connection with the Drax Power station for the storage, handling and preparation of wood and biomass materials for co-firing within the Power Station and topsoil storage. The remaining area is used for agricultural purposes, such as growing crops. The site already has consent under s36 of the Electricity Act for the Ouse Renewable Energy Plant, a 299MW biomass-fuelled generating station.
- 4.14.2 The River Ouse is located approximately 1.5km to the north and north-east of the site, which links the port of Goole to the North Sea, and has a jetty which would be used by the proposal. Barlow Mound, which is used for ash disposal from the existing power station and would also be used for the proposal, is situated immediately to the north and west. A PRoW runs along the western edge of the application site, past Barlow Mound and then eastwards across the site to Pear Tree Avenue. This footpath was subject to an application for a FDO. This is shown on the Access and Rights of Way plan [APP-075]. The site has access to the M62 via Junction 36 of the M62 and the A645, whilst a dedicated rail spur enters the site from the south-west, serving the internal 'merry-go-round' rail systems used for the delivery of coal.
- 4.14.3 The site is crossed by a number of drainage ditches, including Carr Dyke. The site is relatively low lying, with the highest levels in the north-west and the lowest in the south-east around the Carr Dyke. Immediately to the north of the site is a SM known as Drax Augustine Priory, with Drax Abbey Farm to its east.
- 4.14.4 The development plan for the area is the SDCS, together with the saved policies of the SDLP and the North Yorkshire Minerals and Waste Local Plan. The LIR [REP1-056] states that there are a number of Development plan policies with which the proposal would conflict. These are concerned mainly with landscape and noise, on which there is no agreement with the relevant planning authorities. SDCS policy

CS13(D) seeks to avoid harm from industrial development to the character of the area and policy SP18(1) seeks to safeguard and enhance the historic and natural environment. This policy, together with SP12, seeks to provide opportunities to enhance green infrastructure. There is also concern about noise, which is covered by SDCS policies SP13(D), SP15, SP17 and SP19, together with saved policies ENV1 and ENV2 of the SDLP. These matters are covered in the relevant sections in this chapter. However, the local authorities concerned have not stated that development consent should not be granted but only that, in their view, further mitigation is required.

- 4.14.5 Agricultural land would be needed for the project but, for the most part, this would be for temporary laydown and construction areas (39ha) which would be restored, the restoration being secured by R22, and could be returned to agricultural use.
- 4.14.6 In terms of recreational use, a footpath that crosses the site would be diverted. However, the diversion would have little impact on the recreational experience for users since it is already in close proximity to the existing power station and views are of the existing industrial area. The Trans-Pennine Way, a national trail, and National Cycle Network Route 65, run along the opposite bank of the River Ouse in this vicinity. Viewpoints 1 and 2 in the LVIA are situated on the trail, respectively about 1.5km and 1km away from the proposed buildings, with a minor and moderate impact, respectively. There have been no representations on the impact on tourism. The impacts on recreation are discussed in the landscape section of this chapter, together with the impact on green infrastructure.

Conclusions on Land Use

- 4.14.7 The Applicant has assessed the land use implications of the proposed development in the ES and the Planning Statement [APP-030], as required by paragraph 5.10 of EN-1. I have also taken into consideration the views of NYCC and SDC on the conformity of the proposal with the development plan. It is generally supportive of the proposal, especially in terms saved SDLP policy EMP 10, which supports additional development directly related to energy generation, and CS policy SP17, which supports low carbon energy, including CCS. However, there would be conflict with other policies on landscape and noise. These are discussed in the relevant parts of this chapter and taken into account in the planning balance in Chapter 6.

4.15 LANDSCAPE AND VISUAL IMPACT

Landscape

- 4.15.1 The landscape character of the area is described in the LVIA [APP-082]. The proposed development would take place within the Humberhead Levels National Character Area, which is considered to be predominantly agricultural landscape with sparse settlement in the flood plains of a number of rivers which drain to the Humber estuary.

This has been subdivided into Local Character Areas. The site would mainly be within the Camblesforth Lowlands, which is characterised by predominantly arable areas, enclosed by hedgerows, and small, isolated woodlands. The sensitivity of the Local Character Areas is described in the ES as low, with prominent power station infrastructure and the presence of major roads as detracting features.

- 4.15.2 Whilst the methodology and 15km study area of the LVIA was agreed with the relevant local authorities, NYCC had outstanding issues in terms of the relationship of the proposal to the wider landscape. In the LIR [REP1-056], they draw attention to the cumulative effects on the landscape and the lack of integration of the development with the surrounding landscape. They also noted the need to take more recent changes in and around the existing power station complex into account from the time of the Local Character Areas. NYCC also consider that the proposal should contribute to the aims of the Leeds City Region River Ouse GI Corridor and Selby Local Nature Partnership Priority Area, through off-site GI enhancement.
- 4.15.3 Paragraph 5.9.8 of EN-1 accepts that nearly all NSIP energy projects will have impacts on the landscape. Some of these impacts have been addressed as far as possible in the design and siting of the larger buildings, as set out in the section on design above. However, there would be changes to the fabric of the landscape in that the industrial element would be increased in scale and, as acknowledged by the LVIA, this would lead to some change in the way the local landscape, including historic features of the floodplain area, is experienced. The landscape summary produced by NYCC [REP4-015] following discussion of the issue at the ISH on Environmental Matters focusses mainly on the lack of recognition in the LVIA of the impact on Drax Priory/ Drax Abbey Farm and the visual impact of the proposal, which is discussed below. The Applicant's response to the matter is given in REP4-010.
- 4.15.4 In terms of mitigation set out in the ES, during the construction phase it mainly comprises the minimisation of vegetation and hedgerow clearance through the CEMP, maintenance of tidy compounds and keeping external lighting to a minimum, to be secured through R18. During the operational period, building heights are such that the limited areas for landscaping on-site could not mitigate any landscape and visual impacts. However, the indicative Landscaping and Biodiversity Framework Document, as updated [REP6-003 to REP6-005], indicates that there is some connectivity of habitats and open space, which would continue to implement the principles of GI. In addition, planting would be provided to the north of the site of Drax Priory. However, NYCC/SDC's view is that the proposed mitigation at Barlow Common and Skerne wetlands would have limited potential for landscape mitigation, since it is intended mainly for biodiversity mitigation.

Visual Impact

- 4.15.5 17 viewpoints were chosen by the Applicant, having regard to settlement patterns and sensitive receptors, and these were agreed with the relevant local authorities [REP1-056].
- 4.15.6 Representations on visual impact were made by NYCC/ SDC [REP1-056] and Kirkwood Stewart Young [RR-004]. The representations of NYCC/SDC principally relate to the loss of open floodplain, through which the site of Drax Priory and the site of the former country house nearby, landscape is experienced as a raised island in the floodplain. Only the underground remains of the Priory and parts of the planted landscape of the country house remain. In addition, the respective Councils' say that the impact from viewpoints 1, 2 and 14 have been underestimated due to the use of sequential views from linear viewpoints, summer vegetation and merging the development in with the existing power station, when in reality it would be closer to the viewpoints and dissimilar in form.
- 4.15.7 In respect of Drax Priory, which is a SM, HE have agreed in their SoCG [REP4-007] mitigation in respect of planting between the Priory and the proposal, secured by R5(2)(a). Although this is in respect of the setting of the heritage asset, it would also provide some mitigation in respect of the wider landscape. Effects would be greatest during construction since the site adjoins a laydown area, but once the laydown site was restored, secured by R22, the impact would be reduced. In terms of the former country house, NYCC/SDC suggest off-site planting and access measures as mitigation in and around the former country house site, through a development consent agreement. This would not follow EN-1, paragraph 5.9.23, which gives an example of infilling hedge and tree lines to mitigate the impact on more distant views. In this case, the proposed mitigation would not fulfil those types of outcome and the Applicant has not proposed any further mitigation through any development consent agreement.
- 4.15.8 NYCC/SDC also made representations in respect of the underestimation of the impact at viewpoints 1, 2 and 14 in the LVIA. Viewpoints 1 and 2 are on the River Ouse at Barmby Barrage and on the Trans-Pennine Trail/ National Cycle Network Route 65. These are relatively distant views of the proposal. Viewpoint 14 is on Pear Tree Avenue and would be closer. Views of the power station complex would be changed and the LVIA has estimated that there would be a minor impact in respect of viewpoints 1 and 14 and a moderate one in respect of viewpoint 2 in terms of significance during the construction and operational phases. Whilst the relevant Councils have said that the impacts could be underestimated and the proposal would be a prominent feature in these views, there would be some mitigation as set out in the landscape section above.
- 4.15.9 Kirkwood Stewart Young's representation [RR-004] concerns his view that the loss of, and intrusion into, the rural landscape is unwarranted and unnecessary, since he questions the need for the proposed

development. The need for the proposal has already been commented on, above.

- 4.15.10 The grid connection lies within the existing industrial area of the existing power station and the cabling would largely be buried underground. As such, the visual impact would be limited and any above ground sections would be set alongside similar structures within an existing industrial landscape. As such, it would comply with the suggested mitigation in section 2.8 of EN-5.

Conclusions on Landscape and Visual Impact

- 4.15.11 I have considered the analysis on the impact of the proposal on landscape and visual amenity and the measures identified to mitigate the potential impacts. The grid connection cable would be largely buried underground and would comply with policy in section 2.8 of EN-5.
- 4.15.12 The LVIA has used appropriate methodology to analyse the potential impact of the proposal. Criticism was raised by the relevant local planning authorities of the methodology and output of the landscape studies during the examination. However, I consider that the information provided in the ES on landscape issues and the further explanation of it by the Applicant during the examination has been sufficient to determine the landscape and visual impact of the proposed development.
- 4.15.13 In terms of landscape impact, there would be mitigation through the layout and detailed design of the proposed development on the main site, as set out in the section on design above. In addition, there would be some mitigation, in terms of the landscaping of the site and its immediate surroundings, through planting. I consider that this would be sufficient to mitigate, as far as possible, the minor to moderately significant impact on the landscape identified in the ES. This would be secured through R5. As such it would comply with paragraph 5.9.15 of NPS EN-1, which requires such development to minimise harm to the landscape, including by reasonable mitigation, and paragraph 5.9.23, which covers off-site mitigation.
- 4.15.14 Paragraphs 2.6.5 and 2.6.6 of NPS EN-2 state that it is not possible to eliminate the visual impact of fossil fuel generating stations and that mitigation should reduce visual intrusion in the landscape and minimise the impact on visual amenity as far as reasonably practical. Much of the proposed landscape mitigation would also reduce the visual impact of the proposed development on sensitive receptors. As such, I consider that the proposal would minimise visual impact as far as practicable in this case and would comply with paragraphs 2.6.5 and 2.6.6 of NPS EN-2. In any event, the need for the project would outweigh any residual adverse impact, as set out in paragraph 5.9.18 of NPS EN-1.

4.16 NOISE AND VIBRATION

- 4.16.1 Paragraph 5.11.9 of EN-1 says that the SoS should not grant development consent unless proposals meet aims which would avoid significant adverse impacts on health and quality of life from noise, mitigate and minimise other adverse effects 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.
- 4.16.2 The Applicant's ES, Chapter B - Noise and Vibration Technical report [APP-038] has assessed noise and vibration. This has been commented on in the LIR [REP1-056] and noise has also been commented on by Kirkwood Stewart Young [AS-014]. I asked written questions on noise in both my FWQ [PD-006] and SWQ [PD-008]. Responses were received from both the Applicant [REP2-011, REP5-011, REP6-008] and SDC [REP5-001]. The topic was also explored at the ISH on environmental matters, from which NYCC/SDC submitted comments on operational noise [REP4-014]. I also issued three requests for further information under Rule 17 on the topic [PD-010, PD-012 and PD-013], responded to by both the Applicant [REP7-009, REP7-010, REP8-004, REP9-004] and SDC [REP7-016, REP8-005, REP9-005]. The matter is also covered in the SoCG between the Applicant, NYCC and SDC [REP9-003].
- 4.16.3 Vibration has been screened out, since the source of vibration would be from trains and there would be little increase in rail deliveries as a result of the proposal. It is agreed in the SoCG that construction noise would largely be mitigated by R20 which covers construction hours, limiting them to daytime Monday to Friday and Saturday morning only. The CEMP required by R18 would allow for environmental monitoring, including noise, and would include a complaints procedure for local residents. The routing of construction traffic in R19 would also be likely to mitigate traffic noise from existing settlements by directing traffic away from them. Similar proposals are likely to relate to the decommissioning phase.
- 4.16.4 The SoCG [REP9-003] reflects the position on operational noise at the end of the examination, together with Appendix 1 to the documents which sets out the respective positions of the Applicant and SDC. SDC accepts that in terms of the design of the buildings and the mitigation that would be provided to the plant and machines on the site [REP7-010], the Applicant has done what is possible to prevent noise emissions from the site and I agree with that assessment.
- 4.16.5 The Applicant and SDC both agree that a requirement would be necessary to control operational noise and its impacts on sensitive receptors. The Applicant's preferred version of this is given as R23 in the DCO. However, SDC disagree on a number of matters in the proposed requirement, as set out in Appendix 1 to the SoCG [REP9-003]. As a requirement, it needs to be precise, reasonable and

enforceable, as set out in paragraph 4.1.7 of EN-1. Sub-paragraph (1) of the requirement is agreed.

- 4.16.6 Sub-paragraph (2) and its Table are not agreed. The wording of the paragraph refers to a scheme based on "the objective" that the level of noise emitted from the facility should not exceed that shown in the Table. SDC's view is that to be precise and enforceable, section (2) should "ensure" that the level of noise emitted should not exceed that shown in the Table. Whilst sub-paragraph (4) includes the need for the development to comply with the stated noise levels in the Table, SDC's wording (22 September 2015) for sub-paragraph (2) is clearer. As such, I conclude that the sub-paragraph (2) of the requirement should be amended to SDC's preferred wording.
- 4.16.7 In the Table, the levels at the Noise Sensitive Receptors (NSRs) during day-time are agreed with exception of NSR1 (Foreman's Cottage) and NSR5 (Drax Abbey Farm) which are the nearest properties. The Applicant's concern is that the levels applied by SDC, reduced from +14dB and +10dB to +5dB for both respectively, would not be achievable in practice and would be unreasonable to impose [REP9-003]. In terms of night-time levels, the Applicant does not agree to the levels at NSR1, NSR4 (Barlow), NSR5, NSR6 (Long Drax) and NSR7 (Old Lodge). On NSR8 (Landing Lane), SDC propose a value of 25dB. In each of these receptors the Applicant's view is that the levels are unreasonable and unattainable, although SDC's calculations bring them into either the "indication of a significant impact" or "indication of an adverse impact" in BS4142:2014.
- 4.16.8 The differences on the values are largely explained through SDC using BS4142:2014, whereas the Applicant is using BS8233/ World Health Organisation assessment methods. In imposing any requirement, the SoS has to have regard to its reasonableness, in this case in terms of the noise levels being attainable by the operator. SDC's calculation using BS4142:2014, which represents the most up-to-date standard on noise from industrial sites, shows some adverse impacts from the proposal, especially at night-time. However, this has to be balanced against the need and urgency for the proposal and the benefits of the commercial testing of the new CCS technology.
- 4.16.9 The Applicant has set out noise limits which, in their view, are attainable in the dDCO R23. They have also suggested mitigation in terms of installation of acoustic windows and ventilation to the bedrooms at Foreman's Cottage and Drax Abbey Farm to achieve reasonable night-time noise levels between the hours of 23:00 and 07:00. These properties are in the Applicant's ownership. The mitigation is also included in the ES Schedule of Mitigation [REP7-007] as well as the requirement. In my view, the Applicant's proposed mitigation would relieve the worst impacts of the proposal in terms of noise, although not alleviating all of the impacts. Balanced against the need for the proposal, the noise impact would not be sufficient reason for refusing consent for the proposal.

- 4.16.10 SDC have proposed a further paragraph to sub-paragraph (3) which would require the scheme of mitigation to show how the limits in the Table in sub-paragraph (2) would be achieved, which would form new paragraph (f) to sub-paragraph (3). The Applicant's view is that this would be unnecessary, since the mitigation is already secured through sub-paragraph (3)(e) and enforcement could be based on the levels in the Table in sub-paragraph (2). I conclude that the proposed new section would not be necessary and as such should not form part of the requirement.
- 4.16.11 Sub-paragraph (4) has not been agreed, since it refers back to the noise levels in sub-paragraph (2). SDC have also suggested a minor amendment which would refer back to the approved scheme in sub-paragraph (1), rather than the "programme" in the existing requirement. I have already commented on the noise levels in sub-paragraph (2). The amendment proposed by SDC would make the requirement more precise and there have been no comments on it by the Applicant. As such, I agree that the amendment suggested by SDC should be made to sub-paragraph (4) of the requirement.
- 4.16.12 Sub-paragraphs (5) and (6) concern the tonality of noise and its control, which both SDC and the Applicant agree is necessary. However, SDC suggest further definition of the types of noise to be controlled, including "prominent impulses or specific features (which are not tonal or impulsive but are readily distinctive against the residential acoustic environment" in both sub-paragraphs. This is intended to include other sound characteristics which can also lead to annoyance, as recognised in BS4142:2014.
- 4.16.13 The Applicant disputes that the wording is sufficiently precise, since these aspects of noise are not defined in BS4142:2014 and "specific features" is not sufficiently well-defined. In addition, the Applicant has confirmed that the plant will not generate impulsive noise and this aspect of the proposed amendment has been included in R23. In this case, I agree with the Applicant that the suggested part of the sub-paragraphs (5) and (6) on impulsive noise is not necessary and the other suggested changes are not sufficiently well defined to be included. Therefore, I propose no change to those sub-paragraphs of the requirement.

Conclusions on Noise and Vibration

- 4.16.14 There would be no adverse effects from the development in terms of vibration. It is agreed that noise during the construction phase would be adequately controlled through R18, 19 and 20. Similar controls would also be likely to be imposed during the decommissioning period. Agreement between the Applicant and SDC has not been possible on operational noise and despite mitigation being applied to control noise levels at night at NSRs 1 and 5, it is likely that there would be an adverse effect on other NSRs at night.

4.16.15 Nevertheless it is not part of SDC's case that these impacts would be such that consent should be refused for the proposal and control over noise levels would be secured through R23. The levels in the Table to that requirement are those which the Applicant says can be practically attained. To use more stringent levels, which could not be attained, would not be reasonable. As set out above, it has to be balanced against the need and urgency for the proposal as well as its potential contribution to environmental benefits in terms of CCS. Operational noise would also be controlled by the EA through the variation to the environmental permit as set out in the SoCG between the Applicant and the EA [REP5-010], which would set noise levels at the boundary of the site. As such, I consider that significant adverse impact on health and quality of life as a result of noise would be avoided and that the proposal would comply with paragraph 5.11 of EN-1.

4.17 SAFETY AND SECURITY CONSIDERATIONS

Safety

4.17.1 In the list of Other Consents and Licences [REP7-006], the Applicant says that they will apply for consent under the Regulatory Reform (Fire Safety) Order 2005, following consultation with the relevant fire and rescue service and the Health and Safety Executive, prior to construction starting. The storage of the coal and biomass fuels, which can be a source of fire, would take place in existing facilities on the existing power station site.

Security

4.17.2 Paragraph 4.15 of NPS EN-1 identifies potential security issues relating to energy infrastructure. No representations were made on this matter. I do not consider that there would be any national security issues arising from the project which could not be covered by normal security measures for such facilities, such as maintaining a secure perimeter. As such the project would comply with paragraph 4.15 of EN-1.

4.18 SOCIO-ECONOMIC IMPACTS

4.18.1 The ES, Chapter 5 - Socio-economic characteristics [APP-044] states that about 3,324 jobs would be created during the construction period and 60 jobs in the operational period. In addition, the Applicant has undertaken to work with NYCC and SDC to ways of improving employment, skills and training in order to improve employment prospects for local people through the development. This would be secured through new R31. In the SoCG [REP9-003] with NYCC/ SDC the Applicant also envisages a Visitor Centre at the site for educational purposes. Other socio-economic benefits of the proposal include: the development of national and international markets through CCS commercialisation and additional national electricity supply. These would all be substantial benefits of the proposal.

- 4.18.2 During the construction stage of the scheme there would be disbenefits to local people, mainly through disturbance, which is a point made in the relevant representation of Kirkwood Stewart Young [RR-004]. The ES also makes reference to a potential impact on local housing during the construction period, although no evidence or representations have been made on this matter and it has not been taken any further by the NYCC/ SDC. Andrew Wilson [RR-007] has asked whether there would be an impact on property values. Although the Applicant has said that this is not a planning issue in their responses [REP1-005] to my FWQs, the SoS has commented on this issue in other cases under s36 of the Electricity Act. In any event, the immediate area around the site is already dominated by electricity generation infrastructure and it would be unlikely that there would be any additional influence on property prices as a result of this development. Tourism is not strongly developed in the local area and the visual impact of the proposal on national trails, local footpaths and historic elements of the landscape has been discussed in sections of this chapter on landscape and land use.
- 4.18.3 Kirkwood Stewart Young has also commented that consultation on the proposal with the local community has been limited. However, the Applicant has set out their consultation procedures and methods and the resultant changes to the application in their Consultation Report [APP-022]. Letters confirming the adequacy of the consultation are set out in AoC-001 to AoC-013 and the matter was taken into account fully before the application was accepted [PD-003]. The Applicant has committed to continued public involvement as the project progresses and to quarterly meetings with the relevant Parish Councils.
- 4.18.4 Although there would be some disbenefits to local people during the construction phase, these would be relatively short-lived and minor, compared to the need for, and significant socio-economic benefits of, the project. As such, the proposal would be in accordance with section 5.12 of EN-1.

4.19 TRAFFIC AND TRANSPORT

Transport Modes

- 4.19.1 The existing Drax power station is served by the road network, a dedicated spur from the main railway line and on-site "merry-go-round" rail system and also has its own jetty on the River Ouse which was used in the construction of the existing power station. A submission by DB Schenker Rail UK [AS-002] indicates that there is sufficient capacity in the pathways and rail network for any increase in use from the proposed development.
- 4.19.2 The jetty has been included in the DCO application, although it is not intended to do any works, except improve the hardstanding area to it. In their relevant representation [RR-013], the Canal and Rivers Trust (C&RT) acknowledged that the ES mentioned the transport of Abnormal Indivisible Loads (AILs) via the river and jetty, following the

improvement of the adjoining hardstanding for cranes, but also requested consideration of its use of other construction materials, fuel and other materials. They requested that this should be set out in a Sustainable Transport Management plan, which would require the Applicant to assess and promote the economic viability and environmental sustainability of the use of the jetty, secured by a suitably-worded requirement [REP3-003].

- 4.19.3 Paragraph 5.3.10 of EN-1 states that waterborne and rail transport should be preferred over road transport where cost-effective. It is intended that the jetty would be used, with a mobile crane, to bring in AILs during construction. In C&RTs SoCG [REP3-003] with the Applicant, they acknowledge that EN-1 does not give any greater weight to water transport than rail, in considering sustainable transport modes. In addition, there could be some disbenefit in further use of the jetty which would require a conveyor or rail link to the plant which would increase the take of agricultural land and the footprint of the development. The Applicant has decided not to include the proposed requirement on sustainable transport in the DCO. This matter is not agreed in the SoCG with C&RT.
- 4.19.4 In order to comply with EN-1 paragraph 5.3.10, the proposal needs to only use one of the preferred means of transport where it is cost-effective. In this case the Applicant has said that they would use waterborne transport of AILs during construction but that they would use the existing rail infrastructure on the site to bring in coal and other materials in and out of the site. When biomass needs to be used as a fuel, for the reasons given in the transport sensitivity analysis [APP-079], road is a more flexible means of transport. As such, the Applicant has given consideration to sustainable means of transport and using them where practical and cost-effective and therefore the proposed requirement would not be needed.

Transport Assessment

- 4.19.5 The ES section on transport [APP-043] includes the initial Transport assessment for the proposal. The scope of the Transport Assessment was approved by the relevant highway authorities: NYCC, East Riding of Yorkshire Council and Highways England and it was based on the study for the Ouse Renewable Energy Project, updated to cover this proposal. During the examination, other information was provided by the Applicant in the form of a transport sensitivity test [APP-079], which related to the ES.
- 4.19.6 Representations on transport were made by Royal Mail Group Ltd [AS-001] on the grounds of increases in traffic during the construction period which might cause potential delay and disruption to deliveries to Goole and Selby sorting offices. This was followed by a WR from Royal Mail [REP1-058] which included a report by Royal Mail's transport consultant. This concluded that there would be no adverse impact on Royal Mail's vehicular traffic to and from the sorting offices in Goole and Selby. On this basis, Royal Mail require reassurances that

major hauliers would be consulted as part of the communications strategy and would be advised of any road closures during to AIL movement. Concerns about more general disturbance and disruption to the local community were made by Kirkwood Stewart Young [RR-004].

- 4.19.7 The baseline study showed the existing roads and specified routes to the existing power station for HGVs to have significant reserve capacity. The situation during outages when there can be over 1000 extra staff on the existing site was also examined. With the exception of a worst case scenario with base traffic, peak construction traffic and peak outage traffic together, which produced saturation levels on the A614 north arm of the northern roundabout at J36 of the M62, there were no adverse effects on capacity. This would be managed in reality by not having peak construction and outage at the same time. Decommissioning effects would be less since typically there are fewer staff needed and dismantling would mean that there would be fewer HGV trips generated. During the operational period, apart from biomass, most bulk transport would be by rail and staffing levels would be relatively low. The transport sensitivity test [APP-079], which examined the potential impact of the transport of biomass by road, showed that the limited increase in traffic would not alter the conclusions on transport in the ES.
- 4.19.8 In addition, mitigation is proposed in terms of traffic and transport. During the construction period R19 would provide a construction routing and travel plan, encouraging sustainable modes of transport and making provision for AILs. R19(f), would also require details of pre-construction surveys of carriageway surfaces on New Road and Pear Tree Avenue, the extent of which is a matter which had not been agreed with the highway authority, NYCC [REP9-003]. No details about this matter have been provided. However, R19 would allow for the surveys to take place and specifies the standard to which repairs would be made for any damage during construction. R10 requires the details of the new temporary and permanent accesses to be submitted and approved before the development takes place, which would ensure that the necessary local road improvements would be carried out. During the operational phase, R24 would provide for an operational routing and travel plan, providing for the transport of bulk material to and from the development and encouraging sustainable modes of transport for staff.
- 4.19.9 R19 and 24 require the provision of details of routing and travel plans and their implementation. Notification of the routing strategy for AILs is already included in R19(2)(b), as requested by Royal Mail [REP1-058]. Any further communications strategy in respect of routing would be for the Applicant to develop as part of the implementation of R19 and 24. I agree with the Applicant [REP2-011] that this would not require any further change to the DCO.
- 4.19.10 Although there would be increases in traffic on the major routes in the area during the construction and operational phases of the

development, with the mitigation in place, the residual impacts of the development would not be significant and would overcome the issues raised in representations.

Public Rights of Way

- 4.19.11 The proposal would require the diversion of PRow 35.47/1/1, 35.47/6/1, 35.47/10/1 and 35.6/12/1 and the temporary closure of 35.47/1/1, 35.47/10/1 and 35.6/11/1. The FDO for the 4 footpaths to be diverted was made in October 2014 [APP-081 and APP-083], confirmed by NYCC in February 2015 [REP9-003]. The DCO has been amended to reflect the provisions of the FDO and the changes have been set out in amended Access and Rights of Way plans [APP-075].
- 4.19.12 Temporary closures would also be necessary during construction. R7 requires the Applicant to provide a written rights of way management plan for public rights of way being extinguished, diverted or temporarily closed. No representations were made as part of the examination of this application on either the permanent or temporary changes to PRow.

Conclusions on Traffic and Transport

- 4.19.13 I have considered the evidence submitted on traffic and transport and the representations made during the examination on this issue. I conclude that subject to R7, 10, 19 and 24, the proposal would meet policy on this matter set out in section 5.13 of EN-1.

4.20 WATER QUALITY AND RESOURCES

Water Quality

- 4.20.1 Information on water quality is split between different sections of the ES, mainly Chapter C - Surface Water and Flood Risk Technical Report [APP-039] and Chapter D - Geology Technical Report [APP-041].
- 4.20.2 The risk assessments on groundwater and contaminated land have been agreed by the EA and confirmed as such in their SoCG [REP5-010] with the Applicant. During construction protection to groundwater would be provided through R18, which includes provision for soil management, sediment management, good practice on-site and environmental monitoring and also through R14 which covers contaminated land and groundwater. Similar controls would be likely to exist during the decommissioning period. During operation, R12 addresses surface water and foul drainage and R26 addresses waste management, both of which would help to protect the water environment through controlling pollution. The protection of groundwater and other pollution control during operation would also be covered in the environmental permit and through other EA guidance on the storage of materials, oils and fuels. The assessment has also considered the potential impacts on the underlying Sherwood Sandstone, as a major aquifer under the site. Importantly, the aquifer is partly protected by an existing clay layer and the anticipated

increase in localised nitrogen deposition during operation would not be at a sufficient level likely to impact the groundwater Source Protection Zone, the outer zone of which is located on the southern border of the site and encompasses the existing power station and its site [APP-041].

- 4.20.3 The NFU North East made a relevant representation [RR-003] on nitrate deposition on Drinking Water Safeguarding Zones. In their response to my FWQ [REP1-053] the NFU acknowledge EA's role in evaluating impacts on such zones, which would be carried out when the variation to the environmental permit is assessed. The EA acknowledge that this will be looked at when assessing the permit [REP5-010].
- 4.20.4 The ES, Chapter C - Surface Water and Flood Risk Technical report [APP-039] assesses the effects on surface water. Any impacts are likely to be on the River Ouse or on-site water bodies or channels like Carr Dyke. The existing power station has an extant discharge consent to the River Ouse as part of the plant's environmental permit, which occasionally exceeds its limits in terms of copper and temperature. However, in response to Q7.4 of my FWQ, the EA state that the chemical composition of the water in terms of copper does not change with the existing process and is unlikely to do so with the new process [REP1-052]. In respect of temperature, the Applicant [REP1-005] stated that it would be more difficult to control temperature rises but that would be a matter for the EA to resolve through the application to vary the permit. Baseline conditions for Carr Dyke would need to be reassessed, given that there is no recent data on its quality, prior to construction commencing, in order to allow for the environmental monitoring required by R18. Surface water would also be protected during operation through R12, R14 and R26, together with the environmental permit.
- 4.20.5 Although fisheries were originally identified as a part of the main issue on ecology, no representations were subsequently received on this matter, which would be examined as part of the variation to the environmental permit. In addition, the EA has not raised any concerns on the impact on achieving the objectives for water quality in the Water Framework Directive and I have concluded that this is not a matter that requires further consideration as part of this application.

Water Resources

- 4.20.6 The water resources necessary for the proposal are assessed in the ES surface water and flood risk technical report [APP-039]. The NFU state that they would object to significant changes to the existing abstractions [REP2-014]. The existing abstraction licences for water from the River Ouse allow a maximum of 92.5 Mm³/a for cooling water make-up, ash disposal and flue gas desulphurisation and a maximum of 3.73 Mm³/a for boiler water make-up. The Table in the Applicant's response to my FWQs [REP1-005] on water resources shows current usage levels around 30-35Mm³/a, which would give plenty of

headroom in the existing licences, since the water use for the proposal is anticipated to be about 15Mm³/a. Therefore the Applicant does not envisage any variation to the existing abstraction licences at this stage. The EA's response in their SoCG [REP5-010] with the Applicant states that this will be assessed as part of the application to vary the environmental permit.

Conclusions on Water Quality and Resources

- 4.20.7 I conclude that water quality and resources issues have been adequately addressed and, subject to the above-mentioned requirements being in place, the proposal would be in accordance with section 5.15 of EN-1.

4.21 COMBINED HEAT AND POWER

- 4.21.1 Section 4.6 of EN-1 requires consideration to be given to CHP when examining applications for thermal power stations, which can be more efficient in the use of fuel, reducing emissions. Paragraph 4.6.8 states that to encourage proper consideration of CHP, substantial additional positive weight should therefore be given by the SoS to applications incorporating CHP.

- 4.21.2 The Applicant has submitted a Report on CHP as part of the application [APP-032]. This confirms that the generating station has been designed with steam extraction points and with sufficient space on site to accommodate any necessary equipment. The Applicant has also undertaken a preliminary assessment of opportunities for the use of CHP, at a domestic scale but also at smaller and larger industrial scales. Whilst a couple of smaller-scale opportunities were identified in the Selby and Goole areas, these would not be economically viable at this time, since it would be more expensive than natural gas. However, the report does not rule out the potential for CHP in the future, especially if there were to be changes in policy or incentives.

- 4.21.3 The Applicant has proposed R25 to cover CHP. This would ensure that there was sufficient space on site for CHP equipment and routes for steam pass-outs and that a review of CHP was carried out 12 months after the generating station was brought into commercial use and every 5 years thereafter.

- 4.21.4 The EA, in their SoCG [REP5-010] with the Applicant, confirms that the application has carried out an assessment of CHP and that R25 would ensure that space would be available on site and the relevant reviews of CHP potential would be carried out. As part of the application to vary the permit for the existing generating station, the EA have said that they will also consider the CHP readiness of the plant and future reviews for its potential use.

Conclusions on Combined Heat and Power

- 4.21.5 From the evidence submitted, I conclude that the proposal would comply with policy in section 4.6 of EN-1 on CHP and would attract

substantial additional positive weight in its favour in accordance with paragraph 4.6.8 of EN-1.

4.22 GRID CONNECTION

- 4.22.1 The grid connection would be implemented through Works 4 and 8 of the DCO application. In support of this part of the application, the Applicant submitted a Grid Connection statement with the application [APP-028] and this was shown on the Indicative Electrical Connection Route plans [APP-019]. At the start of the examination process the Applicant was in discussion with NGET on 3 possible alternative connections, through a new underground cable to existing 132kV or 400kV substations. The third option involved the use of some overhead line and linkage to the 132kV substation. As the matter had not been settled by the start of the examination, NGET submitted a relevant representation [RR-006] to protect their position and their assets/ operations.
- 4.22.2 During the course of the examination, the Applicant reached agreement with NGET and a side agreement has been drawn up to provide a grid connection to the 400kV substation with a mainly underground cable. As such, NGET withdrew its representation on the proposal by letter dated 17 August 2015 [AS-007]. The relevant changes have been made to the latest version of the DCO [REP7-003] on Works 4 and 8 and the respective plans, the Grid Connection Statement [APP-077 and APP-078] and the plan showing the indicative route for the 400kV electrical connection [APP-076].
- 4.22.3 The undergrounding of much of the cabling has limited the visual impact of the grid connection, so that it would comply with section 2.8 of EN-5.

Conclusions on Grid Connection

- 4.22.4 Since agreement on this matter has been reached and there were no other representations on it, I conclude that the proposal has complied with section 4.9 of EN-1 and the policy guidance in EN-5.

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

5.1 PROJECT LOCATION

5.1.1 The project location has been set out in Chapter 2. The site is not connected within or necessary to the management for nature conservation of any of the European sites considered within the Applicant's assessment.

5.2 HRA IMPLICATIONS OF PROJECT

5.2.1 The Applicant submitted an HRA Report [APP-059] with the application. This considered all sites within 15km of the Boundary of the DCO. A wide boundary was chosen in order to represent a worst case scenario for the effects of a coal-fired power station, and in accordance with the EA's H1 guidance. Three SPAs were identified within this distance but were discounted, as their qualifying bird features are not sensitive to the effects of the project.

5.2.2 The defined study area was agreed with NE and they made no comments regarding sites included in the report in their relevant representations.

5.2.3 During the pre-application stage of the project issues were discussed regarding the anticipated emissions to air and the impact on European sites. The applicant initially intended to pursue a position of "no significant effects" in relation to European sites and developed a draft No Significant Effects report on that basis. However, the report failed to consider fully the implication of an exemption in the Energy Act 2013 for the first 3 years from commissioning. During discussion it was agreed that with the exemption there was the potential for significant effects on 3 designated European sites: River Derwent SAC, Skipwith Common SAC and Thorne Moor SAC. In response to this the Applicant advanced their assessment and produced Stage 2 matrices for these sites having regard to the overall integrity of each site in the light of its conservation objectives. The final version of this document was submitted to Deadline 1 [REP1-023], with no further comments being made on it [REP4-006].

5.2.4 As part of their work on the proposed variation to the environmental permit, the EA will assess the implications for the Habitats Regulations and, similarly, for any discharge consent under the permit. The output of this work was not known at the close of the examination. A variation to the existing abstraction licence is not envisaged at this stage but should one be shown to be necessary, when assessed by the EA, this would also be examined for Habitats Regulations implications [REP1-051, REP1-052].

5.2.5 A Report on the Implications for European Sites (RIES) [OD-004] was drawn up in accordance with PINS Advice Note 10. This brings together all the relevant HRA information provided as part of the

application and the information submitted in the examination up to the date of its release, as part of the Request for Further Information [PD-010] on 7 September 2015. No comments were received on the RIES.

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

5.3.1 The European sites considered in the Applicant's habitat regulations report were:

- Lower Derwent Valley SAC
- Lower Derwent Valley Ramsar site
- Humber Estuary SAC
- Humber Estuary Ramsar site
- River Derwent SAC
- Skipwith Common SAC
- Thorne Moor SAC

5.3.2 The report assessed emissions to the atmosphere/ air quality issues and potential disturbance downstream of the River Derwent due to the works on/adjacent to the jetty on the River Ouse on mobile qualifying features during construction. There was no dissent from any interested party on: the baseline evidence, the assessment methodology and the projects (listed in Annex 2 of the RIES), scope and methodology of the assessment of in-combination effects. The matrices for the HRA Stage 1 are set out in Annex 3 of the RIES.

5.3.3 The report concluded that the project would have no likely significant effect, either alone or in combination with other projects and plans on the qualifying features of the following European sites:

- Lower Derwent Valley SAC
- Lower Derwent Valley Ramsar site
- Humber Estuary SAC
- Humber Estuary Ramsar site

5.3.4 These conclusions were not disputed by any interested parties during the examination [REP4-006].

5.3.5 The report also concluded that, having regard to a number of scenarios, the project would be likely to give rise to significant effects (in-combination effects having been ruled out in section 4.5 of the report) in terms of emissions on the qualifying features of the following European Sites:

- River Derwent SAC (SO₂)
- Skipwith Common SAC (acid deposition and SO₂)
- Thorne Moor SAC (acid deposition).

5.3.6 These conclusions were not disputed by any interested parties during the examination [REP4-006] and these sites proceeded to Stage 2 analysis.

5.4 CONSERVATION OBJECTIVES

5.4.1 The Conservation Objectives for each of the European sites taken forward to Stage 2 were provided by the Applicant with their HRA document, latest version [REP1-023].

5.5 FINDINGS IN RELATION TO EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

5.5.1 The Stage 2 matrices are included as Annex 4 to the RIES.

5.5.2 The Applicant's assessment, having regard to the impacts set out in Table 5.1 of the report on the Conservation Objectives for each of the sites, concluded that there would be no adverse effects on the integrity of any of the following sites and features:

- River Derwent SAC
- Skipwith Common SAC
- Thorne Moor SAC.

5.5.3 As it has been demonstrated beyond reasonable scientific doubt that the proposal would not have an adverse impact on the integrity of any of the European sites above or any other European sites, no mitigation measures would be necessary and no residual impacts have been predicted.

5.5.4 These conclusions were not disputed by any of the interested parties and have been agreed by NE [REP4-006].

5.5.5 Taking into account all of the evidence presented by the Applicant and the IPs, I accept the Applicant's conclusions on the integrity of the European sites in question.

6 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1 BACKGROUND

- 6.1.1 In determining the application in accordance with s104 of the PA2008 (as amended), the Secretary of State must have regard to any relevant NPS, LIRs, prescribed matters and other matters considered to be relevant to the decision. My overall conclusion on the case for development consent for the scheme is based on an assessment of these matters, including the strong levels of agreement between most bodies.
- 6.1.2 The need for further generating capacity and the urgent need for the development of demonstration projects for CCS is set out in Government policy in NPS EN-1 and described in section 3.4 of this report.

6.2 CONCLUSION

- 6.2.1 I have set out my reasons on each of the matters in Chapter 4. In summary. My conclusions on the main issues are set out below:
- 6.2.2 The proposal would not have any unacceptable effects in terms of air quality, subject to consent being granted for an environmental permit. No evidence has been submitted to show that consent would not be granted for the permit. In assessing the impacts on human health and habitats, the Applicant has examined a worst-case scenario with the generating station being coal-fired and running in air-mode for the first 3 years and at 56% thereafter. The situation with the auxiliary boiler start-up was also considered.
- 6.2.3 There is sufficient evidence to allow the SoS to conclude that significant effects can be excluded for all European protected wildlife conservation sites or any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects. Furthermore, such information has been provided, as is reasonably required, for the SoS to determine whether an appropriate assessment is required. In my view I have concluded that it is not necessary. I am also satisfied that the proposal would not result in any unacceptable adverse impacts on wildlife sites and protected species generally. The mitigation put forward in the biodiversity mitigation and management plan, secured by R16 of the recommended DCO and the development consent agreement, would make provision for habitat lost on site as a result of the development.
- 6.2.4 The design of the proposal has been set out in the application as far as possible at this stage. The detailed design would be secured by R4 and by the limits set in it, which would restrict the scale of the development to that in the DAS, already assessed in the ES. Landscaping of the development and the implementation and maintenance of the landscaping would be controlled through R5 and 6

of the recommended DCO. The design approach accords with the aims of NPS EN-1 and the detailed aspects of the design for the proposal would be subject to control by the relevant local planning authorities through the above requirements.

- 6.2.5 The proposal would be of a size and scale to have an adverse effect in terms of the landscape resource and also its visual impact. The only specific mitigation proposed in the recommended DCO would be that R5(2)(b), would not be sufficient to fully mitigate the effects on the landscape of the proposal. However, it would comply with paragraphs 2.6.5 and 2.6.6 of NPS EN-2 by reducing the visual intrusion in the landscape and minimise the impact on visual amenity as far as reasonably practical. Nevertheless, there would be some residual unmitigated impacts in terms of the visual impact of the proposal, especially from viewpoints 1, 2 and 14.
- 6.2.6 The proposal would not have an unacceptable adverse impact on existing transport networks, including traffic routing and management, highway safety and the environmental impact of traffic. This matter would be controlled through R19 and 24 of the recommended DCO.
- 6.2.7 There would not be any significant impacts from noise during the construction and decommissioning stages, with R18, 19, 20 and 25 in place. The proposal would give rise to some unmitigated operational noise at sensitive receptors, when assessed under BS4142:2014. Mitigation through design and through insulation to machinery and plant would minimise noise emissions. Further mitigation to NSRs 1 and 5 is proposed by the Applicant, secured through R23. This requirement also sets noise limits at identified NSRs, although some of these are higher than SDC would like to see. However, no evidence has been submitted that the harm would be such that development consent should be denied.
- 6.2.8 The proposal would comply with the tests set in the NPPF and the NPPG and NPS EN-1 on flood risk and would incorporate flood resilience measures, with mitigation ensured through R13 of the recommended DCO. Water quality would be protected through measures in the CEMP (R18), the proposals for drainage (R12), a scheme to deal with any contaminated land (R14) and discharge consents through the environmental permit.
- 6.2.9 The Applicant has analysed the current situation with the headroom in its abstraction licences, especially from the River Ouse. There is sufficient headroom to allow for the operation of the proposal at this time. However, this matter will be examined by the EA in assessing the variation to the environmental permit and kept under review.
- 6.2.10 The proposal would make appropriate arrangements for waste management at the construction, operational and decommissioning stages. Waste management would also be the controlled by the environmental permit.

- 6.2.11 The proposal would not have an unacceptable adverse impact on the historic environment, including the setting of the heritage asset, Drax Abbey, which is a SM, with mitigation in place through R5(2)(a). Mitigation measures would also be required for archaeology, which would be secured through R15 of the recommended DCO.
- 6.2.12 The proposal would make provision for CHP, as required by NPS EN-1, which would also be considered and reviewed under the environmental permit. This gives it substantial additional weight in accordance with EN-1.
- 6.2.13 Paragraph 3.6.5 of EN-1 emphasises the role of commercial-scale generating stations incorporating CCS in the Government's efforts to establish carbon capture technology and the proposal is key to that aim, in demonstrating part of the CCS chain. As CCS is included in the development, there would be no need to reserve space or make any other provision for it. Therefore, the proposal would comply with section 4.7 of EN-1.
- 6.2.14 The proposal includes a grid connection, the detailed design for which would be the subject of R4 of the recommended DCO for Works 4 and 8. This would ensure that the relevant planning authorities would have control over the design of the grid connection and its impact on the local environment.
- 6.2.15 The proposal would comply with the guidance in NPS EN-1, in terms of health and safety, safety and security, aviation safety and health.
- 6.2.16 The proposed development would have a positive socio-economic impact, especially in terms of regeneration, employment and skills and education, secured by R31 of the recommended DCO.
- 6.2.17 The proposal would comply with the guidance on site selection in NPS EN-1. It would be in accordance generally with development plan policies generally for land use in the local area, with the exceptions of landscape and noise.
- 6.2.18 In conclusion, in general the proposal would not have any adverse effects after mitigation had been applied, with the exception of the impacts on landscape and NSRs from operational noise.
- 6.2.19 As regards public benefit, EN-1 sets out a clear and urgent need for new electricity generation. At paragraph 3.3.2, EN-1 sets out the need to ensure sufficient generating capacity to meet energy security objectives. This is expanded on in paragraph 3.3.4 with fossil-fuel stations being required to generate capacity at times of high demand and to complement renewable energy and in paragraphs 3.3.13-15, to meet future increases in demand and the need to decarbonise energy supply. These matters give substantial weight in favour of the proposal. In addition, as the power plant would be CHP-ready, under paragraph 4.6.8, additional substantial weight is also added in favour of the proposal.

- 6.2.20 The innovative nature of the proposed CCS element of the generating station is supported by EN-1 in paragraphs 3.6.5 and 3.7.4, which would accord with national energy policy to meet emission targets, whilst enabling the UK to continue to use fossil fuels as part of its generating capacity. As part of the demonstration project, there is a clear need for the project to be delivered and there are no viable alternatives to it.
- 6.2.21 These policy considerations would outweigh any harm to the landscape and as a result of operational noise emissions. As such, I conclude that the proposed development would comply with the provisions of EN-1 and EN-2.

7 COMPULSORY ACQUISITION

7.1 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

7.1.1 The purpose of the proposed compulsory acquisition (CA) is to enable the undertaker to construct, operate and maintain a new thermal generating station (an ultra-supercritical oxy-fuel coal-fired power plant of up to 448MWe gross with the ability to co-fire biomass) that will be fitted with carbon capture and storage technology and associated development. The request was made through the inclusion of Articles in the initial dDCO [APP-005].

7.1.2 The request was accompanied by the following documents (the reference is to the latest version):

- BoR, as revised [REP5-006]
- Land plan, as revised [APP-073]
- Statement of Reasons, as revised [APP-007]
- Statement of Funding [APP-010] and Project and Funding Update [AS-010]
- Grid Connection Statement, as revised [APP-077]

7.1.3 The land required for the development for which CA powers are sought, lies within and adjacent to, the boundary of the existing Drax Power Station site. The land within the boundary of the site is in industrial use and that outside generally in agricultural use. In addition, the site includes an existing jetty and land associated with it on the River Ouse. The Grid Connection is intended to be provided within the existing Drax site. The details of the land in relation to the interests to be acquired are set out in the BoR and shown on the Land plan, submitted with the application and updated through the examination.

7.1.4 The dDCO includes provisions allowing the undertaker to compulsorily acquire rights in land, interfere with or extinguish existing rights in land and create new rights in land including subsoil. The dDCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981, with certain modifications (A24). The applicant is only seeking CA powers where it has not been possible to acquire the land/ rights by agreement.

7.1.5 The Statement of Reasons, submitted with the application, concludes that there is sufficient justification to exercise CA over all identified rights and interests. The Funding Statement, also submitted with the application, concludes that appropriate funding for liability for compensation arising from the acquisition of land and rights, the creation of new rights and for statutory blight will be available where compensation is appropriately and reasonably claimed.

7.1.6 On 25 September 2015 Drax Power Ltd (DPL) announced its intention not to invest further in the project, beyond the Front End Engineering and Design work and development activities, including consenting. A

summary of their position was accepted as an additional admission [AS-010]. However, DPL have said that they will make the site, along with the infrastructure at the existing Drax Power Station, available for the proposal. The method of funding would remain unchanged, with the scheme highly dependent on Government funding, although the remaining partners of CPL, Alstrom UK Holdings Ltd and BOC Group Ltd, have significant assets to underpin the scheme [Annexes, REP4-003]. From the information provided by the Applicant, there would be no change in either the approach to CA or the necessary funding for it.

7.1.7 Following on from the Chancellor's Autumn Statement, referred to in paragraph 1.1.13 of this report, I have stated that I have not been able to take its implications into account and it will be a matter for the SoS to consider before a decision is made on this DCO.

7.2 THE REQUEST FOR TEMPORARY POWERS

7.2.1 The dDCO seeks CA powers but also temporary powers over land recorded as being required temporarily in the BoR or any other Order land for the purpose of carrying out the authorised project (A29) or to maintain it (A30). The list of plots for which temporary possession may be taken under A29 is listed under Schedule 10. Possession of such land has to be given up within three years of the completion of the commissioning of the generating station, unless the owner agrees to an alternative period. A30 permits the use of the land for as long as is reasonably necessary to maintain the project. It also seeks powers to carry out intrusive and non-intrusive surveys on land within the Order limits (A17).

7.2.2 The dDCO also seeks additional powers in respect of:

- Street works (A9 and Schedule 3)
- Stopping up and alteration of streets (A10 and 12 and Schedules 4, 6 and 7)
- Rights under or over streets (A29)
- Access to works (A11 and Schedule 5)
- Acquisition of subsoil only (A25)
- Felling or lopping of trees or hedgerows (A34)

7.3 THE PURPOSES FOR WHICH THE LAND IS REQUIRED

7.3.1 The BoR, as revised, identifies affected persons and the land required in five parts. The initial BoR [APP-008] was updated during the examination with the most up-to-date versions being REP5-006.

7.3.2 Part 1 of the BoR lists the plots of land over which the developer seeks CA powers and lists persons with Category 1 and 2 interests in that land. Part 2 lists all the Category 3 persons who the applicants think would or might be entitled to claim under the Compulsory Purchase Act 1965, the Land and Compensation Act 1973 or s152(3) of PA2008. Part 3 lists persons enjoying easements or other private rights over land which would be extinguished, suspended or otherwise interfered with. Part 4 lists Crown interests, which relates to only 2 plots,

adjacent to the River Ouse. Part 5 lists land which is either: land subject to special parliamentary procedures; special category land; or, replacement land. No land in this category would be required for the proposed development.

7.3.3 The initial BoR [APP-008] included at section 8.0 a list of statutory undertakers. The Applicant was requested to remove this as part of the s51 advice, after acceptance of the application, since the BoR did not comply with paragraph 9 of Annex D of the PA2008 Guidance related to the procedures for the compulsory purchase of land. This matter was complied with in the final version [REP5-006] and meets the requirements of the guidance.

7.4 THE REQUIREMENTS OF THE PLANNING ACT 2008

7.4.1 CA powers can only be granted if the conditions set out in s122 and 123 of the PA2008, as amended, are met.

7.4.2 Section 122(2) states that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.

7.4.3 Section 122(3) states that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. However, this does not mean that the CA proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

7.4.4 Section 123 requires that one of three conditions is met by the proposal. I am satisfied that the condition in s.123 (2) is met because the application for the DCO included a request for CA of the land to be authorised.

7.4.5 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers: –

- All reasonable alternatives have been explored;
- The Applicant must have a clear idea of how they intend to use the land and demonstrate that funds are available; and,
- The decision maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with human rights of those affected.

7.5 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

- 7.5.1 I asked 2 rounds of written questions, of which 8 questions were directed at CA in my FWQ [PD-006], under the headings Compulsory Acquisition and Infrastructure, and 1 question into the matter in my SWQ [PD-009].
- 7.5.2 A CA Hearing was held on 2 July 2015. By the time of the hearing negotiations were well advanced with the remaining affected parties, including Yorkshire Water, NGET and National Grid Gas (NGG). Therefore these parties decided that they were not going to attend any hearings. Nevertheless, I held the hearing and took the opportunity to review progress and other matters with the Applicant. I also generally inspected the land on my accompanied site visit.
- 7.5.3 At various times during the examination, I requested updates on the outstanding negotiations, as the Applicant intended to negotiate with affected persons throughout. These were provided as part of the Applicant's responses to my 2 rounds of questions [REP1-052 and REP5-011] and also by way of SoCG and/or revised/ updated examination submissions, right up to the close of the examination. My report considers these matters up to the close of the examination.

7.6 THE APPLICANT'S GENERAL CASE

- 7.6.1 The Applicant has set out their general case in the Statement of Reasons [APP-071]. They consider that the inclusion of CA powers in the dDCO meets the condition in s122 of the PA2008 and that the interests being sought are no more than reasonably required. Paragraph 11 summarises the works (Work No 1A to Work No. 8), detailed in Schedule 1 to the dDCO, and also lists the nature of the CA power or rights to access land which is sought. This includes: land over which CA powers are sought; land over which the CA of rights is sought; and, land sought for temporary use.
- 7.6.2 The authorised development would be in accordance with national energy policy for the UK, with the need for it being set out in NPSs EN-1 and EN-2. All reasonable alternatives to CA have been explored. Any interference in rights is for a legitimate purpose and proportionate to it. All plots are stated to be required to implement the works applied for. The Applicant has sought to acquire land and rights by negotiation but even where agreement has been reached compulsory powers are still being sought in parallel to ensure timely implementation.

Alternatives to compulsory acquisition

- 7.6.3 The Applicant has sought a negotiated solution to the interests in the BoR, minimising disruption to landowners. The selection of the site for the generating station has been set out in Chapter 5 of the ES Main Report [APP-035]. In terms of the location for the commercialisation competition process, a number of options were considered, with projects at Peterhead and White Rose selected. The site has

advantages such as; its proximity to the existing power station and proposed CO₂ pipeline, existing power transmission infrastructure, coal and biofuel facilities, with good road and rail access and resources for water supply and discharge.

- 7.6.4 However, none of the choices available would have obviated the need for CA of plots, especially where certain ownerships are unknown. Temporary possession has been considered and used where possible, for example, construction laydown areas.

ExA's conclusion on alternatives

- 7.6.5 In coming to a conclusion to alternatives, I have taken into account all the evidence submitted. The Applicant has undertaken a process of examining alternative sites for the generating station. In addition, the Applicant has been negotiating to acquire land and rights for some time, with some success on gaining agreement. Even by the start of the examination most of the CA was unopposed and that has further reduced over the course of the examination. Temporary possession has been used, where appropriate. Therefore the SoS can be satisfied that all reasonable alternatives to CA have been considered.

Proportionality

- 7.6.6 The Applicant has sought to acquire only the land interests necessary to implement and maintain the project. The site area has been limited to that which would be required for the new power station and the temporary possession for laydown areas during construction. The proposal also makes use of the existing infrastructure and transport facilities at the existing power station, reducing potential land take. The grid connection, which has now been decided upon, would connect through an existing substation.

ExA's conclusion on proportionality

- 7.6.7 There have been no representations that the land and rights sought to be acquired are excessive for the scale of development proposed.
- 7.6.8 Taking into account all of the evidence presented, I conclude that: the land to be acquired is no more than 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 its acquisition is proportionate.

7.7 AVAILABILITY AND ADEQUACY OF FUNDS

- 7.7.1 Paragraph 17 of the latest DCLG guidance³ states that: 'Any application for a consent order authorising CA must be accompanied by a statement explaining how it will be funded'.
- 7.7.2 The Applicant is CPL, which is a group in which DPL, Alstrom UK Holdings Ltd and The BOC Group Ltd each have equal one-third stakes. In section 2 of the Funding Statement [APP-010] and in the Appendices to REP4-003 the Applicant sets out the assets of the parent companies and in section 5 the sources of funding awards from DECC and the European Commission (EC). The decision on the EC funding has already been made, although a decision on the DECC funding is not due until after the close of the examination. The majority of the rest of the funding would be sought through equity funding and debt and financial guarantees. In my FWQs [PD-006, Q1.7], I asked about the importance of the funding awards in the overall funding package. The Applicant has said that if these were not received it would be unlikely that other sources of finance would come forward and there are no contingency funds to cover any shortfall.
- 7.7.3 Funding for claims for blight, which are not expected, would also be covered by the funding from Government and the assets of the remaining partners of CPL [Annexes, REP4-003].

ExA's conclusion on funding

- 7.7.4 In considering the adequacy and security of the funding, I have taken into account the assets of the parent companies, their backgrounds and the Applicant's statement on funding awards. Nothing during the examination has suggested that the financial viability of the project has not been properly assessed.
- 7.7.5 Taking into account all of these factors, based on the information available at the close of the examination, I conclude that the SoS can be satisfied that adequate funding is likely to be available to enable CA within the statutory period following the Order being made. Although the Applicant has discounted the likelihood of any statutory blight notices being served, provision has been made for resources to be made available in this eventuality.

7.8 SPECIFIC GROUPS OF AFFECTED PERSONS

Introduction

- 7.8.1 Apart from Crown Land (plots 67 and 69), there is no other special category land that would be required for the project. The only other special considerations affecting the Order Land are those under s127

³ "Planning Act 2008: guidance related to procedures for the compulsory acquisition of land" (DCLG September 2013)

and s138 of the PA2008, relating the statutory undertakers' land and their rights over land.

- 7.8.2 Only three relevant representations were made on compulsory acquisition. One was by NGET, which is discussed below and was subsequently withdrawn. The second was by the EA, which clarified that they were not affected by the compulsory acquisition proposals since their interests arose from their statutory undertaker functions and effectively withdrawn. The third was by Northern Powergrid (Yorkshire) Ltd and concerned the diversion of a cable. This matter was also resolved and the representation withdrawn. No-one asked to be heard at the CAH, apart from the Applicant.

Crown land

- 7.8.3 Section 135 provides protection to Crown Land from CA. Two plots are included in the BoR, Plots 67 and 69, as part of Work No.6 as part of the jetty and River Ouse. No powers of CA are sought over these plots and in the letter dated 17 November 2014, the Crown Estate Commissioners confirmed that it had no objections to the land being included in the DCO [REP4-002]. As such, the Applicant has the rights necessary to secure the use of the jetty.

Statutory Undertakers

- 7.8.4 A number of statutory undertakers are listed in the revised BoR as having interests in specific plots, but as any representations that they have made in respect of CA have been withdrawn, s127 is not triggered. The details are set out below. The overall position on all of these plots has been set out above and the SoS should be satisfied that the land and rights are required for the purposes of the development.

- 7.8.5 The main statutory undertakers with interests in the site include:

- DPL - Plots 1-33, 36-37, 41, 43-69
- NGET - Plots 1-66
- Northern Powergrid Yorkshire plc - Plots 1-21, 23-31, 33-36, 38-42, 43-66
- National Grid plc - Plots 1-21, 23-31, 33, 36, 41, 43-66
- RWE NPower Group plc - Plots 1-21, 23-31, 33, 36, 41, 43-66
- E.ON UK plc - Plots 1-21, 23-31, 33, 36, 41, 43-66
- EDF Energy plc - Plots 1-21, 23-31, 33, 36, 41, 43-66
- Yorkshire Water Services Ltd - Plots 1-21, 23-31, 33, 36, 41, 43-66
- North Yorkshire CC - Plots 5, 15, 22-25, 28, 32, 36, 37, 44, 48
- Environment Agency - 67, 69
- Selby Area IDB - Plots 5, 7-10, 12, 15-18, 22- 28, 30, 48, 54, 58
- Heritage England - Plots 18-19

- 7.8.6 The Applicant is not proposing to acquire any land belonging to statutory undertakers outright. However, some statutory undertakers have apparatus in, rights over or an interest in the land over which

compulsory powers are sought (Plots 15 and 16). In addition, other statutory undertakers have interests and/or apparatus in land over which both permanent rights and temporary powers are sought.

Drax Power Ltd

- 7.8.7 DPL is the freeholder for the majority of the Order land, with the exception of highway land, Plot 30 (the ownership of which is unknown) and plots which concern NGET, Crown Estate, NYCC and the EA. The DPL plots are being dealt with by the CPL Property Agreements. These include option agreements and a draft lease for the oxy-power plant site and options agreements and a draft lease for the temporary laydown areas. They have mutual protective provisions for DPL and the Applicant. Good progress has been made with agreeing these documents and, although they were not finalised by the end of the examination, there is nothing to suggest that agreement cannot be reached.
- 7.8.8 In addition, the Applicant is negotiating with NGCL with respect of the land requirements for the CCS pipeline, including the "Pig Trap" site. A Memorandum of Understanding was signed between DPL, the Applicant and NGCL in May 2015, which was updated in October 2015 [AS-015] before the end of the examination, which documents the state of the negotiations between the three parties.

National Grid Electricity Transmission plc (NGET)

- 7.8.9 NGET objected to the proposal on the grounds of a potential adverse effect on their interests. They own a 400kV substation and adjacent land, together with likely ownership of adjacent highway subsoil. A connection agreement was been signed with NGET on 1 June 2015 [REP3-005] and the principle of grid connection is secured. Protective provisions have been agreed concerning their apparatus through a side agreement. A letter dated 17 August 2015 [AS-007] has withdrawn their objection to the DCO and therefore this matter is resolved.

Northern Powergrid (Yorkshire) plc

- 7.8.10 The main concern of Northern Powergrid was the need to divert an 11kV overhead line in their ownership, which currently crosses one of the temporary laydown areas. The Applicant proposes that Northern Powergrid carries out the diversion works on their behalf. In their letter dated 8 October 2015 [AS-013], Northern Powergrid confirms that they have concluded contractual documentation with the Applicant in respect of their plant and apparatus this matter is resolved.

National Grid plc/ RWE NPower Group/ E.ON UK plc/ EDF Energy plc

- 7.8.11 These parties have been considered by the Applicant as a group, since they may have rights, including the transporting of goods over land

and berthing rights at the jetty from legal agreements dated 31 March 1990 on the privatisation of the electricity industry. Even if the rights do exist, the Applicant's opinion is that they would not seek to utilise them now that the existing power station on the site is owned by DPL. The Applicant has written to these groups, asking about their intentions concerning the berthing rights, to ascertain whether they would conflict with the needs of the project. None of the responses received indicate that there would be any conflict with the project. In addition, the Applicant has checked the position of the above companies in respect of s127 of the PA 2008. E.ON and EDF Energy are statutory undertakers in respect of s127. However, RWE and National Grid plc are not statutory undertakers, but remain affected persons under the PA2008. No issues have been raised by these parties and therefore any potential issues seem to have been resolved.

Yorkshire Water Services Ltd

- 7.8.12 Following contact with the Applicant, Yorkshire Water has sent a letter, dated 28 August 2015 [AS-009], stating that they have pipes within the Order limits but that the standard protective provisions in the dDCO would be sufficient to protect their apparatus.

North Yorkshire CC

- 7.8.13 NYCC is listed in the BoR in its role in relation to adopted highways and public rights of way. All highways will remain vested in NYCC since there will be no stopping up of highways and there are other provisions in the DCO to deal with works in streets and the temporary stopping up of streets and public rights of way.

EA

- 7.8.14 The EA is listed in the BoR in its role as river authority, which would not be affected by the DCO. Neither body has objected to the DCO. Powers of CA are not sought in the interests of these public bodies.

Selby Area Internal Drainage Board (IDB)

- 7.8.15 Selby Area IDB is listed in the BoR in its role as drainage board responsible for Carr Dyke, Sand Lane Drain and Drain Nos. 44, 20/9 and 20/10. The IDB requires continued access to these watercourses and a number of consents for works on or around Carr Dyke were issued on 11 August and 28 August 2015.

Heritage England

- 7.8.16 Heritage England are also listed in respect of their statutory role, in this case on the Drax Priory site. They have not objected to the DCO or commented on this matter.

British Telecommunications plc (BT)(Plots 22-23, 25-28, 32-33, 53-55, 59-60 and 66)

- 7.8.17 No representations have been made by BT. However, the Application has included protective provisions in Schedule 12 to protect operators of electronic communications code networks, which would protect BT's apparatus.

National Grid Carbon Ltd (NGCL)/ National Grid Gas (NGG) Ltd

- 7.8.18 NGCL is not an affected person at present, although their DCO scheme and land included in it overlaps with the Order limits for this scheme. DPL is negotiating a number of property agreements with NGCL in respect of land for the CCS pipeline, which had made progress by the end of the examination. In addition, a Memorandum of Understanding, updated at the end of the examination [AS-015], has been submitted by the Applicant which shows the status of the negotiations at the end of the examination.
- 7.8.19 Solicitors acting for NGG have confirmed that they have no apparatus inside the Order limits.

Conclusions - statutory undertakers

- 7.8.20 Therefore I conclude that since all the relevant representations on made by statutory undertakers have been withdrawn, there are no outstanding issues and therefore s127 of the PA2008 is not triggered in this case.

Other Affected Persons

David Charles Darsie Watson and Richard Ian Watson (Plots 19, 23-27, 29 and 31)

- 7.8.21 The Watsons have a lease from DPL for the agricultural use of land required for the operational site and the temporary laydown areas and are therefore tenants and occupiers of the land. DPL is seeking to finalise the "Watson Agreements" which include the surrender of the existing lease and the arrangement of new farm business tenancies, which would ensure the availability of the land at the relevant time for the project to go ahead unimpeded. By the end of the examination the terms of the Watson Agreements have been agreed, although their finalisation is dependent on the CPL and NGCL Agreements being finalised.

Martin Nunns (Plots 2 and 4)

- 7.8.22 Martin Nunns has a grazing tenancy from DPL on part of Barlow Mound and as such is a tenant and an occupier. The BoR notes his interests on Plots 2 and 4, although the Applicant now says that only Plot 4 is relevant. In any event, the Applicant is seeking to avoid ash deposition operations on this area of land, although the land has been included in the BoR to ensure that it is available for the project. The

Applicant's view is that it would be preferable to reduce the size of the tenanted area, rather than use CA powers, although it is necessary to include them as a default.

Cemex UK Operations Ltd (Plots 5-6, 9-10, 11, 33, 50, 54 and 56)

7.8.23 Cemex are tenants of DPL in respect of a small area of Plot 11, which is required since part of the Applicant's ash conveyor would oversail it. An amendment would be necessary as part of the Cemex lease, which had not been agreed by the end of the examination. In this case, the land needs to be included, in order for the Applicant to be able to rely on CA powers, if necessary.

7.8.24 Cemex also has rights to use certain internal roads on the Drax operational site. The Applicant has sought a joint statement from Cemex which was not finalised by the end of the examination and therefore default CA powers are also necessary for this matter.

Diane Hey/ Timothy Hey (Plot 31)

7.8.25 Mr and Mrs Hey were included in the BoR in error and have been removed from the updated BoR [REP5-006].

Drawsign Image Engineering Ltd (Plots 33, 50, 54, 56)

7.8.26 Drawsign was originally shown in the BoR as an occupier on Plot 50. However, these interests have been shown to lie outside the boundary of this plot. They have been removed as an occupier from the updated BoR [REP5-006].

7.8.27 Drawsign also has rights to use certain internal roads on the Drax operational site. The Applicant has sought a joint statement from Drawsign which was finalised by the end of the examination and is included as Appendix 2 to REP7-005. However, they remain in the BoR as having rights over land and therefore default CA powers are also necessary for this matter.

Power Minerals (Plots 33, 50, 54 and 56)

7.8.28 Power Minerals occupies a facility adjacent to the proposed development and has rights to use certain internal roads on the Drax operational site. The Applicant has sought a joint statement from Power Minerals which was finalised by the end of the examination and is included as Appendix 3 to REP7-005. However, they remain in the BoR as having rights over land and therefore default CA powers are also necessary for this matter.

Lytag

7.8.29 Lytag has a facility on the wider Drax site and has rights of access on certain internal roads on the Drax operational site and could be impacted by traffic from the proposal. It was not included in the

original BoR due to a land referencing error. The Applicant had sought a similar joint statement from Lytag to those for Cemex, Drawsign and Power Minerals. However, Lytag's parent company, Aggregate Industries, has said it is their policy not to offer such agreements in respect of planning applications. This is set out in their correspondence at Appendix 4 to REP7-005. The Applicant's view is that it would work with all those who have access rights once the working details of the project are finalised, which accords with Lytag's view in their correspondence.

Other land interests

- 7.8.30 Many of those listed in the BoR have derived their interests following conveyances when areas of land were sold by the SoS for Defence to the Central Electricity Generating Board in the 1960s for the development of the original power station. Some of the rights were retained by the SoS and then subsequently sold to multiple owners. Nevertheless they are recorded as affected persons in the BoR. In their review of such rights and ownerships, set out in Table 2.1 to REP2-006, the Applicant has updated the information and indicated how it will proceed with this matter. It should be noted that no joint statements have been provided, no responses were made and no representations made by any of these affected parties. The Applicant has carried out due diligence in respect of rights and divided these into three groups.
- 7.8.31 Firstly, those rights which have been shown not to relate to land which is within the Order limits. These have been removed from the updated BoR [REP5-006].
- 7.8.32 Secondly, those rights which are in existence but are sufficiently remote in their application that the implementation of the DCO will not interfere with the interests or require them to be suspended or extinguished. In respect of these rights the Applicant would not rely on the powers of CA or seek their discharge or suspension and has not sought to agree joint statements with those benefitting from the rights at this stage.
- 7.8.33 Thirdly, rights that might be impacted to a minor extent but are unlikely to be extinguished or prevented as a result of the project. In this case the applicant has contacted the relevant rights holders instead of relying on the powers of CA. The situation with Cemex, Drawsign and Power Minerals has already been set out above. The only other response was a request for further information from Barlow Parish Council, which is also an affected party. This has been provided by the Applicant.

Conclusions - other affected persons

- 7.8.34 In respect of the other affected persons, the Applicant has worked with those who would be affected, for example, with rights to use roads, to use joint statements where possible. However, where

agreement has not been reached or where there are other rights, CA powers continue to be necessary.

- 7.8.35 After carrying out due diligence it has been possible for the Applicant to remove some people from the BoR. However, for those whose rights are remote in their application or are unlikely to be extinguished the Applicant has not relied on CA powers.

Human Rights Act 1998 - the Applicant's case

- 7.8.36 The overall case for the acquisition of the land is set out by the applicant in the Statement of Reasons. The Human Rights Act 1998 transposes the European Convention on Human Rights (ECHR) into UK law. The Applicant has weighed the potential infringement of the human rights by the proposed powers of CA against the potential public benefits, if the Order were to be made. The most relevant sections of the ECHR are: A1 of the First Protocol to the Convention which entitles people to the peaceful enjoyment of their possessions; A6, which entitles those affected by the proposal to a fair public hearing; and A8 which protects private and family life.
- 7.8.37 The Applicant considers that there would be significant public benefit arising from development consent which can only be realised if it contains powers for CA. In this case the applicant considers that the significant public benefits outweigh the effects upon persons who own property (including rights etc) within the Order land. The majority of land contained in the Order is within the control of a company which is a group company of one of the company's shareholders, although third party rights may still be affected. The potential effects of the project are assessed and presented in the ES.
- 7.8.38 Compensation has been made available, see below, for those wishing to claim and affected persons have had the opportunity to make representations under s44 and 56 of the PA2008 and therefore the requirements of A6 have been met. Powers also exist under s118 of the PA2008 to challenge the Order in the High Court, if made, and affected persons also have the right to apply to the Upper Tribunal (Lands Chamber) if the compensation is disputed. Therefore the requirements of the payment of compensation for any interests are met and A1 of Protocol 1 is not contravened.
- 7.8.39 The Applicant has concluded that the inclusion of power of CA would not constitute any unlawful interference in the rights conferred by the ECHR and that it would be appropriate and proportionate to make the Order.

ExA's conclusions on Human Rights

- 7.8.40 NPS EN-1 sets out the urgent need to provide and secure energy supply for the future of the economic and social health of the country and therefore the proposal is in the interests of the wider community. The CA powers sought are part of the overall scheme and are proportionate. They are no more than required to secure the interests

of the wider community and not likely to place an excessive burden on those whose human rights might be affected. Compensation would be paid in cases where negotiated agreements could not be reached. Therefore I consider that there would be no violation of A1 and 8.

7.8.41 A6 of the ECHR relates to a fair and public hearing of any objections to the proposal. There have been no representations or claims made that this Article has been breached. In addition, the application and its examination have followed procedures in accordance with PA2008 and its associated guidance. I consider that parties have had a reasonable opportunity to put their case and have not been placed at any substantial disadvantage to any other parties. As such, there would be no violation of A6 of the ECHR.

7.8.42 In terms of the balance to be achieved between the proposed development and the potential impact on human rights, the proposed development would accord with national and local policy in providing energy for which there is an urgent national need on an allocated site, which would be in the legitimate interest of the wider community. The size and scale of the development, together with the associated infrastructure, would be necessary to produce the power required and distribute it, having regard to environmental considerations. In addition, the proposal would also contain prototype carbon capture, which, if proved, could be used elsewhere to limit the effects of carbon in producing climate change. As such, the compulsory powers sought are proportionate, legitimate and necessary for the project and would clearly outweigh any interference with the human rights of affected parties.

7.8.43 Therefore, I conclude that the proposal would not violate any human rights in relation to the ECHR, as enacted in the Human Rights Act 1998.

7.9 THE EXA'S OVERALL CONCLUSIONS AND RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION POWERS

7.9.1 I have considered the application documents and all of the representations submitted as part of the examination on CA matters in the light of s122, s123 and s120 of the PA 2008, the Human Rights Act 1998 and the DCLG Guidance. No objections were received on compulsory purchase matters. In the light of the evidence submitted, I need to consider whether a compelling case has been made in the public interest, balancing the public interest against any private loss.

7.9.2 The dDCO deals with both the development itself and the proposed CA powers. The case for CA powers cannot be properly considered unless and until I have formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.

7.9.3 I have shown in Chapter 6 that development consent should be granted. The question therefore for me is the extent to which, in the

light of factors set out above, the case is made for CA powers necessary to enable the development to proceed.

s122 of PA 2008

- 7.9.4 The land for which CA would be authorised would be required for the development to which the dDCO relates and would be required to facilitate or be incidental to that development. The amount of land would be that which is reasonably required by the project and would be proportionate to it. No replacement land would be required under s131 or s132.
- 7.9.5 As regards there being a compelling case in the public interest, EN-1 sets out a clear and urgent need for new electricity generation. At paragraph 3.3.2, EN-1 sets out the need to ensure sufficient generating capacity to meet energy security objectives. This is expanded on in paragraph 3.3.4 with fossil-fuel stations being required to generate capacity at times of high demand and to complement renewable energy and in paragraphs 3.3.13-15, to meet future increases in demand and the need to decarbonise energy supply. These matters give substantial weight in favour of the proposal. In addition, as the power plant would be CHP-ready, under paragraph 4.6.8, additional substantial weight is also added in favour of the proposal.
- 7.9.6 The innovative nature of the proposed CCS element of the generating station is supported by EN-1 in paragraphs 3.6.5 and 3.7.4, which would accord with national energy policy to meet emission targets, whilst enabling the UK to continue to use fossil fuels as part of its generating capacity. As part of the demonstration project, there is a clear need for the project to be delivered and there are no viable alternatives to it.
- 7.9.7 I consider that a compelling case in the public interest has been set out by the Applicant in the application and other examination material for CA rights, which would comply with s122(3). A proportionate approach has been taken to the powers sought and attempts have been made to minimise the impact on private owners.

s120(5)(a) and s126

- 7.9.8 A22 and Schedule 9 provide for the modification of compensation and compulsory purchase enactments for the creation of new rights. These comply with s120(5)(a) and do not contravene s126 of the PA 2008.

s127 and s138

- 7.9.9 The Applicant has sought to negotiate with the relevant statutory undertakers and during the examination has reached agreement with NGET over the Grid Connection. Other statutory undertakers have either reached agreement with the Applicant or are covered by the protective provisions set out in schedule 12.

Recommendation

- 7.9.10 My recommendation arises from the examination process, including consideration of the application, all submissions and the proceedings of the CA Hearing.
- 7.9.11 In view of my foregoing conclusions, I recommend that the CA powers included in the dDCO in respect of the land detailed in the BoR [REP5-006] are approved if the SoS is minded to grant development consent for this proposal.

TEMPORARY POSSESSION

- 7.9.12 The areas of which temporary possession may be made are set out in Schedule 10 of the dDCO, listing the plot numbers. The purposes for which use would be made of such areas include: laydown areas, construction compounds, works to streets and to facilitate new accesses and works to the jetty. I consider that all of the areas included in the schedule would be necessary for implementation of the project. There were no representations on this matter and no-one was heard on it at the CAH.

Conclusion and recommendation - temporary possession

- 7.9.13 In conclusion on temporary possession, A29 of the dDCO would make provision for the use of land for carrying out the project and A30 would make provision for the temporary use of land for maintaining it. The Articles also make provision for compensation to be paid in the event of any loss or damage, which would be equivalent to that for CA. In terms of human rights, there has been the opportunity for a fair and just hearing, to comply with A6 of the ECHR. Any temporary possession would be in the interests of the wider community, would not be excessive and compensation would be payable for loss or damage. Therefore I consider that the proposal would comply with Articles 1 and 8 of the ECHR which cover enjoyment of property and a right to family life and the necessary provisions for temporary possession.
- 7.9.14 I recommend that the temporary possession powers included in the dDCO in respect of the land detailed in the BoR [REP5-006] are approved if the SoS is minded to grant development consent for this proposal.

8 DRAFT DEVELOPMENT CONSENT ORDER

8.1 INTRODUCTION

- 8.1.1 The dDCO is the consent sought for the proposed development. It sets out the authority given to the undertaker, including the permanent and temporary acquisition of land and the requirements (similar to planning conditions) to be met when implementing the consent. The submitted application contains a dDCO [APP-005], an Explanatory Memorandum, which explains the intended purpose and effect of the dDCO [APP-006] and a comparison of the dDCO with the Model Provisions [APP-007].
- 8.1.2 The dDCO evolved over the course of the examination, following questions, representations, hearings and other submissions. A further draft and a revised Explanatory Memorandum were produced before the first deadline [APP-068 and APP-069]. At Deadline II, further revisions were made to the dDCO [REP2-002] and the Explanatory Memorandum [REP2-003], together with a document explaining the changes [REP2-004]. At Deadline V, a further dDCO [REP5-004] and an explanation of changes to it [REP5-005] were submitted.
- 8.1.3 The final dDCO was submitted at Deadline VII [REP7-003], together with a comparison with the acceptance version of the DCO [REP7-004]. My recommended DCO is attached as Appendix A.
- 8.1.4 The changes made to the dDCO by the Applicant during the course of the examination mainly address matters raised by IPs and following my FWQs and SWQs. I consider the more important or contested changes in more detail in the sections on Articles and Requirements (R), below. Where I do not mention particular provisions, requirements or schedules, then the Secretary of State (SoS) can be clear that I am satisfied that the measures proposed are appropriate. A number of minor changes of wording are included in my recommended DCO, which are largely corrections, clarifications or sensible amendments to the existing document. Unless otherwise stated, my comments below relate to the Applicant's final dDCO [REP7-003] as carried forward into my recommended DCO.

8.2 ARTICLES/SCHEDULES

- 8.2.1 The articles set out the principal powers to be granted if consent is given. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remained a starting point for the examination of the dDCO and a comparison with them has been provided as part of the application [APP-007]. Precedent cases have also been considered where appropriate.

Article 2

- 8.2.2 A2 covers the interpretation of the dDCO. The main changes made during the examination relate to the definition of the Barlow Mound

controls, discussed under A3; changes following the consent for the Long Drax FDO 2014; and, minor updates, additions and other amendments.

Article 3

- 8.2.3 A change has been made in respect of Work No. 3 which relates to the use of Barlow Mound for the storage of fuel ash. The proposed Article seeks to bring the storage of fuel ash from both the existing and proposed power stations under the controls established in the planning permission for Barlow Mound (Ref. C8/22/34M/PA), which is an approach agreed by the Applicant and NYCC, the waste planning authority.
- 8.2.4 The Applicant's view is that s120(1) of the 2008 Act provides for the imposition of requirements with s120(2) stating that these may include requirements which could have been imposed on the grant of any permission which (but for s33(1)) would have been required for the development. NYCC and the Applicant wish to use the proposed wording of A3 to impose the already tried and tested planning condition 8 of the Barlow Mound planning permission to control the storage of waste fuel ash.
- 8.2.5 The other alternative would be to duplicate the conditions in the Barlow Mound planning permission as a requirement in Schedule 2 to the dDCO, naming NYCC as the enforcing planning authority. However, that would create 2 sets of controls over the storage activities at Barlow Mound. The Applicant is also concerned that any variation to a planning condition on the Barlow Mound application would also require a commensurate change to the recommended DCO. This matter was discussed at the ISH into the DCO, where I requested a written submission on the matter. [REP4-011] sets out the Applicant's reasoning for the approach to Work No. 3, supplemented by their response to my SWQs 3.1-3.3 [REP5-011].
- 8.2.6 The Applicant's view is that the authority for varying a planning condition by DCO is contained in s120(3) of the PA2008, which states that a DCO may make provision relating to, or matters ancillary to, the development for which consent is granted. S120(4) goes on to provide that the matters under subsection (3) includes particular provision for or relating to any of the matters in Part 1 of Schedule 5, which is a list, though not exhaustive, of examples of matters for which a DCO may make provision. Under the powers in subsection 5(a) a DCO may modify or exclude a statutory provision of an Act or an instrument made under an Act which relates to any matter for which provision might be made in the order. The Applicant's view is that if a DCO may modify or exclude a statutory provision, it may modify or exclude the terms of a planning permission issued pursuant to a statute. The provision would not include any matters in the descriptions in s120(8). As such, the Applicant, together with NYCC, believes that this provides the basis for varying a condition attached to an existing planning permission.

- 8.2.7 In support of their argument, the Applicant cites the example of the Hinkley Point C New Nuclear Power Station, where planning conditions were abrogated (or disapplied). The detail of this example is set out in sections 2.16-2.20 of REP4-011. However, the Hinkley Point DCO still provides for the operation of the site to be governed by the DCO, whereas the wording suggested by the Applicant does not do so, as it refers back to the planning permission.
- 8.2.8 I asked for further justification on this matter in my SWQs, with the Applicant's response provided in REP5-011. The first point of concern was whether a planning permission could be considered to be an instrument made under an Act. In addition to points already made, such as the Hinkley example, the Applicant also sought to justify planning permission as an instrument, through legal definition, as a legal document, a form of statutory licence, pursuant to the Town and Country Planning Act 1990. It is argued that the Applicant's proposed wording of A3 would therefore be capable of varying the existing Barlow Mound planning permission.
- 8.2.9 Also in my SWQs, I requested information on whether the deposition and storage of fuel ash from two power stations rather than one would represent an intensification of the use of the Barlow Mound. In REP5-011, section 3.3, the Applicant states that: the development would fall within the existing description of development; it would fall within the terms of the existing conditions e.g. hours of working for conveyors; the combined volume of ash would be significantly less than historically deposited, due to sales and the nature of the biomass fuel at the existing power station; it would not require any change to the existing permit in respect of Barlow Mound activities; and, it would implement an agreed restoration scheme. As such, the Applicant's view is that there would be no material change of use.
- 8.2.10 In my view the Applicant has now justified the wording of A3 (4) and (5) and their approach to Work No. 3 at Barlow Mound. However, should the SoS not agree this approach and be minded to grant consent, then an alternative has been put forward. In this case, subparagraphs (4) and (5) would be omitted and, instead, the wording at REP5-11, Question 3.2 App1, would be substituted, with changes to A2 and 3 and a new Schedule 2 Part 2 in which a new single requirement (No. 36) securing implementation and operation of the project in accordance with the Barlow Mound controls. This would require the Applicant to apply to NYCC to vary condition 8 of the existing Barlow Mound planning permission to allow ash from the WRCCS to be stored there. NYCC have agreed this approach and support any change to the "Barlow Mound controls" happening under the TCPA rather than PA2008. They have requested a change of wording of the definition of the Barlow Mound controls in A2 [REP7-014], which would refer directly to the existing planning permission, making it more precisely defined.

Article 10 and Article 39

- 8.2.11 These Articles cover the power to alter the layout of streets and the procedure in relation to certain approvals, respectively. They were altered following my FWQs, which queried the consistency between the two articles of the 28-day period after which deemed approval is given. Both Articles now show 28 days as being the relevant period.

Article 12 and original Article 14

- 8.2.12 The original A14 has been deleted, following the confirmation of the FDO during the examination for footpaths around the site. As a result changes have been made to A12, which covers temporary stopping up of streets and public rights of way, and schedule 7 has also been altered to reflect these changes.

Article 28

- 8.2.13 In the original drafting of this Article, which covers rights under or over streets, the right was not subject to any time limit or termination provisions, nor any notice requirement. In my FWQs, I compared this situation with the Thames Tideway Tunnel DCO, which requires a notice to be served and provisions for the rights to be terminated when no longer required. The Applicant has amended the Article, adding sub-paragraphs (6) to (8) which cover this matter.

Article 29

- 8.2.14 This Article covers the temporary use of land for carrying out the authorised development. Paragraph (3)(a) allows the land to be used for up to 3 years after the completion of commissioning. This was questioned in my FWQs, since other projects like Thames Tideway Tunnel only required one year. However, the Applicant has drawn attention to the nature of the project in being a first-of-its-kind CCS project and the need to have timescales commensurate with DECC's structuring of the proposed Project Contract agreement. Given the uncertainties associated with the process and the need for the full chain to be operational, DECC have identified a need for a period of up to 3 years for Commercial Proving of the process and chain. Therefore I consider that the period of 3 years in (3)(a) is appropriate.

Article 39 and Schedule 11

- 8.2.15 Schedule 11 sets out the process in relation to the procedure for the discharge of requirements, under A39. SDC, as the relevant planning authority for the majority of these procedures in this case, requested further time to carry them out, in discussions held with the Applicant. In addition, I asked in my SWQs, 3.4 about the response times given in Schedule 11, compared with those under the TCPA.
- 8.2.16 Following discussions held with SDC, the Applicant has extended and the overall time period for a decision under Schedule 11 to nine weeks to allow for the validation of the application under s1(1). The time for

issuing consultations and notifying of any further information required under s2(3) has also been increased from two to five days. In response to my SWQs [REP5-011], the Applicant has changed the time periods for the appointment of persons and a decision on any appeal under s4(2)(b) and 4(2)(c) to 20 and 30, business days, respectively. These amendments would bring the appeals section in Schedule 11 in line with recently-approved projects like Progress Power. Since the changes to Schedule 11 would go some way to meeting the requirements of the local planning authority in processing the discharge of requirements and would also bring some consistency to the dDCO with others, I consider that they should be accepted.

Article 42

- 8.2.17 A42 has been inserted into the DCO to protect Crown rights. It follows the standard article which the Crown Estate requires in dDCOs which has been accepted elsewhere.

Schedule 1

- 8.2.18 Part 1 of this Schedule includes the description of the authorised development. I have made a minor amendment to the introductory paragraph to reflect the description of the proposal in the application and the development covered in the ES, which relates to the impacts of the development fully coal-fired or co-fired with biomass (where a theoretical maximum of 15% biomass has been taken, when it is the worst-case scenario, for example in the traffic sensitivity test). This is a factual matter and does not have any impact on the nature of the proposed development.

8.3 DESCRIPTION OF WORKS

- 8.3.1 The only changes made to the description of the works during the examination are the changes made following the choice of Grid Connection (Works No. 4 and No. 8), as set out in Chapter 4, above, and a minor change to include laydown works for site raising in Work No. 1B. These are factual matters and are not disputed.

8.4 PROTECTIVE PROVISIONS

- 8.4.1 A40 brings into effect the protective provisions in Schedule 12. These matters are reported on in the section on CA. The two sets of Protective Provisions have been provided (for Electricity, Gas, Water and Sewerage Undertakers and for Electronic Communications Code Networks, the latter being added during the examination). No objections have been received to them either before or during the examination.

8.5 REQUIREMENTS

- 8.5.1 The requirements are contained in Schedule 2. Following the Applicant's responses [REP1-005] to my FWQs, a number of requirements were amended in relation to works that can be carried

out prior to the discharge of matters relevant to particular requirements, following an amendment to the definition of "commence" so that it has no exclusions and adding "permitted preliminary works". In addition, the Applicant has added a reference to the ES mitigation annex to a number of the requirements in order to secure the measures which are set out within it. In examining the requirements, the policy advice in paragraph 4.1.7 of EN-1, that they should be necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects has been taken into account, together with the advice in NPPG.

Requirement 2

- 8.5.2 This requirement was changed following the Applicant's response to my FWQs to require notice of commissioning at one trigger point only, to ensure clarity.

Requirement 4

- 8.5.3 As set out in the comments on the changes to A3 (Barlow Mound), the existing planning permission has the relevant controls for fuel ash storage and therefore there is no need for further details to be submitted. Paragraph 4(5) of the requirement is no longer necessary and can be deleted. Since the connection to the substation under Work No. 4 has been agreed and the plans form part of the DCO, former paragraph (a) of paragraph (5) can also be deleted. A number of other minor changes have also been made to the requirement.

Requirement 5

- 8.5.4 Following the Applicant's response to my FWQs [REP1-005], the trigger for the submission of the landscaping scheme is prior to the commencement of development and the requirement also requires the scheme to be in accordance with biodiversity mitigation and management plan. In addition, this requirement and R6 both reference a "maintenance plan" following discussion of the matter at the ISH into the DCO.

Requirement 10

- 8.5.5 Subsection (2) has been added to this requirement to ensure that any access from Pear Tree Avenue to the site is for emergency use only, at the request of the highway authority, due to the width and general nature of the road.

Requirement 12

- 8.5.6 R12 has been substantially modified in the light of the WR by the EA [REP1- 049]. The principles of surface water drainage for the site have been adopted in the requirement, with separate attenuation storage north and south of Carr Dyke. Although the volume of water to be attenuated for the area north of Carr Dyke has not been specified, any

impacts would be controlled through the existing discharge consent, as set out in subsection (3) of the requirement.

Requirement 13

- 8.5.7 R13 has also been amended following the EA's WR [REP1-049]. The changes include adding the level of the site, finished floor levels for buildings and the level for sensitive equipment, as well as flood emergency response and contingency plans for construction and commissioning and operational phases of the development.

Requirement 16

- 8.5.8 This requirement covers the biodiversity mitigation and management plan and the amendments include bringing the plan forward prior to commencement, links to the landscaping scheme in R5 and including YWT as a consultee. Subparagraph (2)(b) provides for details of the implementation timetable and maintenance and management of the scheme to be submitted and therefore reference to a specific management period is not necessary.

Requirement 18

- 8.5.9 R18 sets out the measures to be contained in the CEMP. Following the EA's WR [REP1-049] a sediment control and soil management plan have been included in the requirement. Furthermore, a scheme for environmental monitoring has been added, together with any necessary corrective actions, following comments in the LIR [REP1-056] and discussion with SDC at the ISH into the DCO.

Requirement 19

- 8.5.10 The dilapidation surveys required by the highway authority are still disputed and are an outstanding issue in the SoCG with NYCC/SDC [REP9-003]. Paragraph 2(f) has been added to secure the surveys, although NYCC dispute the extent of the surveys. The road lengths included in the paragraph are those which would be mainly used by the Applicant, rather than the wider public, and therefore I consider that the lengths included in the requirement are appropriate.

Requirement 20

- 8.5.11 The noise level limit has been amended to allow 55dB LA_{eq} during evenings and week-ends and 45 dB LA_{eq} at nights at residential receptors, instead of an overall 50 dB LA_{eq} at the Order limits. These limits would comply with the lowest level specified in Table E.1 of BS 5228 and have been agreed with SDC [REP9-003].

Requirement 23

- 8.5.12 The noise limits set in the requirement on operational noise are not agreed between the Applicant and SDC. This matter is discussed in detail in Chapter 4 of this report. As a result of the evidence provided

during the examination, I have made changes to sub-paragraphs (2) and (4) of the requirement, which would help to protect the living conditions of neighbouring residents in respect of operational noise.

Requirement 26

- 8.5.13 Following the EA's WR [REP1-049], they have been added as a consultee on the site waste management plan.

Requirement 30

- 8.5.14 Requirement 30 prevents development other site-raising taking place until consents for the carbon dioxide pipelines and storage have been provided by the undertaker to the relevant planning authority. It also requires evidence that an environmental permit has been granted for the development. The permit would control the processes of the plant including such matters as the time spent in air-mode, the fuels to be used and the operation of the CCS chain. As such, requirements covering such matters would not be necessary since they would duplicate the controls of the permit.

Requirement 31

- 8.5.15 As discussed in Chapter 4, my view is that this requirement should be included in the recommended DCO to cover employment, skills and training, including the promotion and support of development opportunities, during the construction and operation of the proposal. The requirement put forward has been agreed with both NYCC and SDC and I consider that such a requirement meets the tests set out in 4.1.7 of EN-1 and NPPG.

8.6 OTHER LEGAL AGREEMENTS

- 8.6.1 In response to WRs from the EA and YWT concerning the loss of habitat on-site, including a pond and other wetland, the Applicant has put forward a signed development consent obligation [REP7-011] to provide mitigation for the loss. The terms of the loss and the proposed mitigation, at Skerne Wetlands Complex and Barlow Common, are set out in the SoCGs with the EA [REP5-010], and also YWT [REP5-009].
- 8.6.2 I consider that the ES shows a loss of habitat for which it would not be possible to provide mitigation on the site. As such, the proposals in the development consent agreement which would include wetland and other habitat creation and improvement and its management over a 10 year period, are necessary and would be a proportionate response, in terms of mitigation. Para 4.1.8 of EN-1 states that S106 agreements (which includes development consent obligations) should be necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development. The completed development consent obligation complies with these tests.

8.7 DCO - CONCLUSION

8.7.1 I have examined the dDCO, having regard to all representations made and all the evidence presented to me and am content with the recommended DCO as set out in Appendix A.

9 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

SUMMARY

- 9.1.1 In coming to my overall conclusion, I have had regard to the relevant NPSs, the LIR submitted during the examination, all prescribed matters and all matters that I consider are important and relevant to this application. The legal and policy context that I consider applies to this application is set out in Chapter 3. My findings in relation to policy and factual issues are in Chapter 4 and my findings and conclusion in respect of Habitats Regulations are in Chapter 5. My overall conclusion on the case for development consent and my recommendation that development consent is granted is set out in Chapter 6.
- 9.1.2 I have also considered the request for CA powers in Chapter 7 and concluded that there is a compelling case in the public interest to grant CA powers sought by the Applicant.
- 9.1.3 In Chapter 8, I concluded and recommended that if development consent is granted as recommended, then the order should be made in the form set out in Appendix A. In coming to this view, I have taken into account all of the matters raised in the representations and consider that there is no other reason that would lead me to a different conclusion.
- 9.1.4 In relation to s104 of PA 2008, I further conclude that:
- Making the recommendation Order would be in accordance with NPSs EN-1, EN-2 and EN-5, as set out in the conclusions to the foregoing sections, above;
 - That in consideration of the other exceptions referred to in s104 of PA 2008, I find no reason on the matters before me to demonstrate that deciding the application in accordance with the NPSs would: lead to the United Kingdom being in breach of its international obligations; lead to the SoS being in breach of duty imposed on the SoS by or under any enactment; or, be otherwise unlawful by virtue of any enactment.
- 9.1.5 Other consents would be required, notably the environmental permit, but, from the statements of common ground and other submitted evidence, there is no reason, at this stage, to suggest that they would not be granted.
- 9.1.6 Therefore, I recommend that, for the reasons set out in the above report, the SoS makes the White Rose CCS (Generating Station) Order, as set out in Appendix A.

APPENDICES

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APPENDIX A: RECOMMENDED DEVELOPMENT CONSENT ORDER

201[●] No. [●]

INFRASTRUCTURE PLANNING

The White Rose CCS (Generating Station) Order 201[●]

Made - - - - [●]
Laid before Parliament [●]
Coming into force - - [●]

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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(a).

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act(b) and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Examining authority, having considered the application together with the documents that accompanied it and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the Examining authority, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State has decided to grant development consent and, under sections 114, 115, 120 and 122 of the 2008 Act, to make the following Order :

(a) S.I. 2009/2264, as amended by S.I. 2010/493, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, and S.I. 2013/522.
 (b) 2008 c.29.
 (c) S.I. 2010/103, amended by S.I. 2012/635.

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the White Rose CCS (Generating Station) Order 201[●] and comes into force on [●] 201[●].

Interpretation

2.—(1) In this Order —

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

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

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

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

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

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

“the 2008 Act” means the Planning Act 2008;

“access and rights of way plans” means the plans certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“approved plans” means the plans listed in Part 2 of Schedule 1 (approved plans) and such revised or supplemental plans as may be approved pursuant to the requirements;

-
- (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 18 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 1971 (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). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) 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 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted 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 (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(3A) 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) 1984, c.29
- (e) 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.
- (f) 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).

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

“Barlow Mound controls” means the controls that apply at the date of this Order to land including the area of Work No.3, comprised of the conditions attached to the Barlow planning permission, and including any variations to those conditions and any replacement controls as may be granted or agreed;

“Barlow planning permission” means the planning permission dated 11 December 1998 granted by North Yorkshire County Council with reference C8/22/34M/PA;

“the book of reference” means the book of reference certified by the Secretary of State 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;

“commercial use” means that carbon dioxide produced by the generating station is being transported from the Order land for permanent storage;

“commissioning” means the process of testing all systems and components of the authorised development, including those not yet installed, in order to ensure that they and the authorised development as a whole functions in accordance with the undertaker’s design objectives, specification and operational requirements;

“completion of commissioning” means in respect of the generating station, that it is first in commercial use, such date to be certified by the undertaker to the relevant planning authority;

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

“the combined heat and power assessment” means the document certified as the combined heat and power assessment by the Secretary of State for the purposes of this Order;

“the design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order;

“the environmental statement” means the environmental statement submitted pursuant to regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as such by the Secretary of State for the purposes of this Order;

“the environmental statement mitigation annex” means the document certified as the environmental statement mitigation annex by the Secretary of State for the purposes of this Order;

“the generating station” means the generating station comprised within Work No. 1A;

“highway” has the same meaning as in the 1980 Act;

“highway authority” means North Yorkshire County Council including its successors;

“the indicative landscaping and biodiversity framework plan” means the plan certified as the indicative landscaping and biodiversity framework plan by the Secretary of State for the purposes of this Order;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means, in respect of Work Nos. 1A, 1B, 3, 6 and 8 the outer limits of the corresponding numbered area shown on the works plans and, in respect of Work Nos. 2, 4, 5 and 7, the limits to either side of the corresponding numbered line shown on the works plans;

“local footpath order” means the Footpath Nos 35.47/1, 35.47/6 & 35.47/10, Long Drax and 35.6/12, Barlow, Drax Power Station, Long Drax Diversion Order 2014;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct, replace or improve but not so as to vary from the authorised development and only to the extent that such operations or works are not likely to give rise to any materially new or materially different environmental

effects compared to those identified in the environmental statement, and any derivative of “maintain” is to be construed accordingly;

“NGET” means National Grid Electricity Transmission plc (company registration number 02366977) of 1-3 Strand, London, WC2N 5EH;

“Northern Powergrid (Yorkshire) plc” means Northern Powergrid (Yorkshire) plc (company registration number 04113220) of Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired and described in the book of reference;

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

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

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of the Order apply is situated except in relation to Work No.3 for which the relevant planning authority is North Yorkshire County Council including its successors;

“requirements” means the requirements in Schedule 2 (requirements);

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act(b), 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 3 of the 1991 Act, for which purpose “highway authority” has the meaning given in this article;

“street works” has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A of the 1984 Act;

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

“undertaker” means Capture Power Limited (company registration number 07885334) or the person who has the benefit of this Order in accordance with articles 6 (benefit of Order) and 7 (consent to transfer benefit of 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 Secretary of State 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 are to be taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A”) are references to the works so designated in Part 1 of Schedule 1 and references to “a part” of a Work No. are to any part of that Work No.

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the works plans, the land plans or the access and rights of way plans (as specified in each case).

(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.

(b) Section 48 is amended by the Local Transport Act 2008 (c. 26), Pt 7 s.124(2).

(7) The expression “includes” is to be construed without limitation.

(8) References to a “plot” in this Order are references to the plots shown on the land plans and detailed in the book of reference.

PART 2

Principal powers

Development consent etc granted by the Order

3.—(1) Subject to the provisions of this Order and, subject to paragraph (4) to the requirements, the undertaker is granted development consent for the authorised development to be carried out in accordance with the approved plans.

(2) Subject to paragraph (3), each numbered work is to be situated on the corresponding numbered line or numbered area shown on the works plans.

(3) In constructing each numbered work, the undertaker may deviate from the corresponding numbered line shown on the works plans or within the corresponding numbered area shown on the works plans up to the limits of deviation.

(4) In relation to Work No.3:

(a) the requirements do not apply; and

(b) subject to paragraph (5) the Barlow Mound controls apply and are enforceable pursuant to the provisions of the 1990 Act.

(5) Condition 8 of the Barlow planning permission applies as if the words “and the generating station authorised pursuant to the White Rose (CCS) Generating Station Order []” were inserted after the words “Drax Power Station” in that condition.

Maintenance of authorised development

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker is authorised to and may at any time maintain the authorised development.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of authorised development

5. Subject to the provisions of this Order and to the requirements the undertaker may operate and use the generating station comprised in the authorised development.

Benefit of Order

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to:

(a) Work No. 7 in relation to which this Order has effect for the benefit of the undertaker and Northern Powergrid (Yorkshire) plc; and

(b) Work No. 8 in relation to which this Order has effect for the benefit of the undertaker and NGET.

Consent to transfer benefit of Order

7.—(1) The undertaker may—

- (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 in writing 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.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is—
 - (i) a statutory undertaker; or
 - (ii) a highway authority responsible for the highways within the Order land; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any such claim;
 - (iv) payment of compensation into court in lieu of settlement of any such claim has taken place; or
 - (v) it has been determined by the tribunal or court of competent jurisdiction in respect of any claim that no compensation is payable.

Defence to proceedings in respect of statutory nuisance

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

(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.

of the authorised development which is being used in accordance with any scheme of monitoring and attenuation of noise agreed with the relevant planning authority; 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), does 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.

PART 3

Streets

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) 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) Where the person carrying out any works pursuant to paragraph (1) is not the street authority the provisions of sections 54 to 106 of the 1991 Act apply to any such works.

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of new or altered means of access

11.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(1) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed.

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Temporary stopping up of streets and public rights of way

12.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street and public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, alteration or diversion of a street or public right of way 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 column (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule and the public rights of way specified in column (2) Schedule 7 (public rights of way to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(4) The undertaker may not temporarily stop up, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the highway authority; and
- (b) any other street or public right of way without the consent of the highway authority, and such consent must not be unreasonably withheld or delayed but the highway authority may attach reasonable conditions to any such consent.

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

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

Access to works

13.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 4 (streets subject to permanent and temporary alteration of layout);
- (b) form and layout the temporary means of access in the location specified in Part 2 of Schedule 4 (streets subject to permanent and temporary alteration of layout); and
- (c) 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 authorities

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

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, alteration or diversion of a street authorised by this Order;

- (e) the undertaking in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access); and/or
 - (f) the adoption by a street authority which is the highway authority of works —
 - (i) undertaken on a street which is existing publicly maintainable highway; and/or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.
- (2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the 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) specify a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

Supplemental powers

Discharge of water

- 15.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.
- (2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).
- (3) The undertaker must 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 must not be unreasonably withheld.
- (4) The undertaker must 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 must not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertaker must 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 must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b).
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning

(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. 2010/675, to which there are amendments not relevant to this Order.

of section 57 of the Harbours Act 1964(a) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

Protective work to buildings

16.—(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 completion of commissioning.

(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 purpose 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 must, 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 38 (arbitration).

(7) The undertaker must 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

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

(b) 1991 c. 57, amended by sections 100(1) and 120(1) of, paragraph 128 of Schedule 22 to, and Schedule 24 to the Environment Act 1995 (c. 25).

- (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, following the completion of commissioning, first in 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 must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves 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) is to 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.

Authority to survey and investigate the land

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

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

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

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

- (a) must, 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 may 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 must not be unreasonably withheld.

(5) The undertaker must 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, in accordance with Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of human remains

18.—(1) In this article “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant local authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

- (11) On the re-interment or cremation of any remains under this article—
- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
 - (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the relevant local authority mentioned in paragraph (4).
- (12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.
- (13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.
- (14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

PART 5

Powers of acquisition

Compulsory acquisition of land

- 19.**—(1) 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 and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.
- (2) As from the date on which a compulsory acquisition notice 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) is discharged from all rights, trusts and incidents to which it was previously subject.
- (3) This article is subject to article 22 (compulsory acquisition of rights) and article 29 (temporary use of land for carrying out the authorised development).

Statutory authority to override easements and other rights

- 20.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), regardless of whether it involves—
- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract.
- (2) The undertaker must pay compensation to any person whose land is injuriously affected by—
- (a) an interference with an interest or right to which this article applies; or
 - (b) a breach of a restriction as to use of land arising by virtue of contract, authorised by virtue of this Order and the operation of section 158 of the 2008 Act.
- (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 use of land arising by virtue of a contract.

(a) 1857 c.81; section 25 is amended by the Criminal Justice Act 1982 (c.48.) s.46.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act is to be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

21.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) (execution of declaration) as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to 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

22.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land as are specified in column 2 of that Schedule.

(3) Subject to section 8 of the 1965 Act (other provision as to divided land), as substituted by article 26 (acquisition of part of certain properties), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights

23.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are to 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^(a) (power of entry),

(a) 1981 c.66.

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right 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) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker or Drax Power Limited are to be extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private right over land of which the undertaker takes temporary possession under this Order are to be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights over 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 do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right 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 is to be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

24.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 **(b)** is to apply as if this Order were a compulsory purchase order.

(a) Section 11 is amended by Schedule 4 to the Acquisition of Land Act 1981 (c.67), Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71), the Church of England (Miscellaneous Provisions) Measure 2006 No. 1 Sch.5 para.12(1) and the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

(b) 1981 c.66.

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

(3) In section 3 (preliminary notices), for subsection (1) substitute—

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

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

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is 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)” is omitted.

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

Acquisition of subsoil only

25.—(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 19 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights) 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 is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 26 (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

26.—(1) This article applies 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 is to 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 is to be required to sell only the land subject to the notice to treat must, 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 is to 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 is to 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 is to 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 is to 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, must 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 must 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.

Compulsory acquisition of land – incorporation of the mineral code

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

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

Rights under or over streets

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

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

(3) Paragraph (2) does 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, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not 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.

(6) The undertaker shall as soon as reasonably practicable and in any case no later than 14 days before entering the subsoil or airspace, serve notice of the use under this article, on the owner and/or occupier of the subsoil or airspace proposed to be used, and such notice shall be accompanied by plans showing in sufficient detail the subsoil and airspace to be used under this article and upon written request the undertaker shall supply a copy of such notice and plans to the highway authority.

(7) If at any time following the use pursuant to paragraph (1) the subsoil or airspace is no longer required to be used under this article for the purposes of the authorised project—

- (a) the undertaker shall serve notice on the owner that the subsoil or airspace is no longer required;
- (b) upon service of notice to the owner the right of the undertaker to use the subsoil or airspace given by paragraphs (1) and (2) shall cease; and
- (c) the undertaker shall within a reasonable time following the written request of the owner to do so, remove its equipment from the subsoil or airspace and restore the subsoil or airspace to the reasonable satisfaction of the owner and deliver up vacant possession of it.

(8) Save in respect of cranes oversailing the highway, the undertaker may not exercise the powers under this article after completion of commissioning.

Temporary use of land for carrying out the authorised development

29. The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of:

- (i) the land specified in column (1) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
- (b) remove any buildings and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) construct any works specified in relation to that land in column (2) of Schedule 10, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must 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—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of three years beginning with the date of the completion of commissioning; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of the completion of commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

(5) The undertaker must 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, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects 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)(a)(i) except that the undertaker is not to be precluded from—

- (a) acquiring new rights over any part of that land under article 22 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 25 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (a) (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

(a) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession of any land specified in Schedule 10 more than once.

Temporary use of land for maintaining the authorised development

30. Subject to paragraph (2) 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) does 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 must 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 must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must 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 this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects 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 is not to 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) applies 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).

Statutory undertakers

31. Subject to the provisions of Schedule 12 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish or suspend 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.

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is temporarily altered or diverted or its use is temporarily stopped up under article 11 (construction and maintenance of new or altered means of access) or article 12 (temporary stopping up of streets and public rights of way), any statutory utility whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is temporarily altered or diverted or its use is temporarily stopped up under article 12 (temporary stopping up of streets and public rights of way) or article 11 (construction and maintenance of new or altered means of access), any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) is to, 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 the utility 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.

(7) Paragraphs (3) to (6) does not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs must be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (apparatus and rights of statutory undertakers in stopped up streets) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

(4) In this article—

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

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

PART 6

Operations

Felling or lopping of trees

34.—(1) Subject to paragraph (2) the undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using or maintaining the authorised development.

(a) 2003 c.21; there are amendments to section 151 that are not relevant to this Order.

(2) Paragraph (1) does not permit the undertaker to fell or lop a tree within the extent of the publicly maintainable highway without the consent of the highway authority, such consent not to be unreasonably withheld or delayed.

(3) Save in the case of emergency the undertaker must, not less than 14 days before entering any land pursuant to paragraph (1), serve notice of the intended entry on the owners and occupiers of the land.

(4) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(5) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

PART 7

Miscellaneous and general

Application of landlord and tenant law

35.—(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 authorised development; 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 is to prejudice the operation of any agreement to which this article applies.

(3) No such enactment or rule of law is to 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

36. Development consent granted by this Order is to 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).

Certification of plans etc.

37.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access and rights of way plans;
- (b) the works plans;
- (c) the land plans;

- (d) the book of reference;
- (e) the environmental statement;
- (f) the combined heat and power assessment;
- (g) the indicative landscaping and biodiversity framework plan;
- (h) the environmental statement mitigation annex; and
- (i) the design and access statement.

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

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

Arbitration

38. Any difference under any provision of this Order, unless otherwise provided for, is to 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 Secretary of State.

Procedure in relation to certain approvals etc.

39.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a traffic authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order or any requirement, such consent, agreement or approval must, if given, be given in writing and must not be unreasonably withheld.

(2) Save for applications made pursuant to Schedule 11 (Procedure for discharge of requirements) and except as provided for in paragraph (3), if, within eight weeks after the application or request has been submitted to an authority or an owner as referred to in paragraph (1) of this article, it has not notified the undertaker of its disapproval and the grounds of disapproval, it is to be deemed to have approved the application or request.

(3) Schedule 11 has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements and any document referred to in any requirement.

Protective provisions

40. Schedule 12 (protective provisions) has effect.

Service of notices

41.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the

(a) 1978 c30. There are amendments to this Act which are not relevant to this Order.

service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body, and,
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner” or “occupier” (as the case may be) of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Crown rights

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

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

AUTHORISED DEVELOPMENT AND APPROVED PLANS

PART 1

AUTHORISED DEVELOPMENT

In the County of North Yorkshire and the District of Selby—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act being an electricity generating station with a nominal gross electrical output capacity of up to 448 MWe fuelled by coal or coal co-fired with biomass with associated development, comprising:

Work No. 1

Work No. 1A – (the generating station site) development comprising:

- (a) Site raising and preparation;
- (b) Boiler house including boiler, coal bunkers, coal mills, biomass bunker, biomass mills, fans, air heaters, water and steam pipework;
- (c) Air and gas fans and ducts;
- (d) Flue gas treatment systems including flue gas desulphurisation, electrostatic precipitators, selective catalytic reduction;
- (e) Flue gas desulphurisation including limestone mills, absorber tower, gypsum dewatering system and associated storage facilities;
- (f) Stack / chimney including flue gas emissions monitors;
- (g) Steam turbine hall including steam turbine and generator, condenser, steam and water pipework, pumping and heating equipment,
- (h) Oxygen producing air separation units comprising air compressors, distillation and heat exchange equipment;
- (i) Molecular sieve adsorber units, cryogenic pumping systems and vaporisation units;
- (j) Oxygen storage tanks and vessels;
- (k) CO₂ gas processing unit comprising flue gas condenser, heat exchange equipment, molecular sieve adsorber units and CO₂ compressors;
- (l) Cooling water towers, water storage basin, pump house and pipe work;
- (m) Buildings housing main control room, electrical and control systems
- (n) Administration buildings including offices, canteen, welfare and visitor centre;
- (o) Maintenance buildings including workshop, warehouse and storage area;
- (p) Electrical switchgear buildings and transformer areas;
- (q) Demineralised water production, storage tanks and laboratory;
- (r) Industrial water and waste water treatment and conditioning plant;
- (s) Light fuel oil storage tanks and pump house;
- (t) Ash storage and handling equipment;
- (u) Fire brigade station and first aid treatment
- (v) Fire water pump house and equipment;
- (w) Auxiliary boiler;
- (x) Ammonia storage tanks;

- (y) Security gatehouse and weighbridges;
- (z) Rain water attenuation buffers;
- (aa) Bridges and crossings over Carr Dyke;
- (bb) Mechanical, electrical and water networks, pipework, cables, racks, infrastructure and instrumentation including connections between Work Nos 2, 3, 4 and 5, and parts of this Work No. 1A; and
- (cc) Equipment, buildings and modules ancillary to the generating station and its associated buildings and structures

Work No. 1B – (temporary laydown and construction) development comprising site raising and laydown and construction areas relating to the construction and maintenance of Work Nos. 1A, 2, 3, 4, 5, 6, 7 and 8

Work No. 2

(Fuel intake, limestone and gypsum and fuel ash handling transportation infrastructure) development comprising:

- (a) Coal handling facilities including conveyors and storage, and biomass handling facilities including conveyors;
- (b) Fuel ash handling facilities, including conveyors;
- (c) Limestone conveyors;
- (d) Gypsum conveyors;
- (e) Materials handling systems electrical stations; and
- (f) Including any necessary works to existing infrastructure and buildings

Work No. 3

(Fuel ash storage) development comprising fuel ash storage

Work No. 4

(Electrical connection) development comprising an overground and underground 400kV electrical cable circuit and associated telemetry and electrical protection auxiliary cabling

Work No. 5

(Water connections) development comprising:

- (a) Cooling water, potable water and sewerage connections; and
- (b) Cooling water pump house and associated infrastructure

Work No. 6

(Jetty hardstanding area) development comprising hardstanding areas for unloading of equipment or materials, storage, parking and circulation adjacent to the existing jetty on the River Ouse

Work No. 7

(11kV diversion works) development comprising the underground diversion of an 11kV overhead electrical cable

Work No. 8

(Substation infrastructure) development comprising:

- (a) Upgrading of existing bays and the preparation of new bays;
- (b) Extension of existing 400kV busbars;
- (c) Installation of new 400kV switchgear;
- (d) Cable trenching for 400kV cables; and
- (e) Cable sealing ends at each high voltage connection between busbars and cables

and such other works within the Order limits necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works listed in this Part of this Schedule and which fall within the scope of the works assessed by the environmental statement including:

- (f) Site clearance, vegetation removal, demolition of existing structures and buildings, soil stripping and storage, bunds, embankments and earthworks;
- (g) Drainage works, culverts and wing walls;
- (h) Temporary de-watering and drainage facilities;
- (i) Lighting;
- (j) Site fencing, gates, and CCTV;
- (k) Landscaping, habitat creation and ecological mitigation;
- (l) Site compounds;
- (m) Construction-related buildings, structures, laydown, storage, plant, machinery, utilities, welfare facilities and haulage roads;
- (n) Electricity, water, wastewater, waste, gas, telecommunications and other services;
- (o) Site roads and parking areas, site access works, new site access points, and works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (p) Temporary and permanent footpaths.

PART 2

APPROVED PLANS

<i>Plan name</i>	<i>Plan reference or number</i>
Works plans	CPL Works Plan Sheet 1 v4 CPL Works Plan Sheet 2 v4 CPL Works Plan Sheet 3 v4 CPL Works Plan Sheet 4 v4
Access and rights of way plans	CPL ARoW Plan Sheet 1 v5 CPL ARoW Plan Sheet 2 v5 CPL ARoW Plan Sheet 3 v5 CPL ARoW Plan Sheet 4 v5

SCHEDULE 2 REQUIREMENTS

Article 2

Commencement of the authorised development

- 1.—(1) The authorised development may not commence later than the date that is five years from the date on which this Order comes into force.
- (2) The authorised development may not commence unless the undertaker has given the relevant planning authority 14 days' notice of its intention to commence the authorised development.

Notice of start of commissioning

- 2.—(1) Notice of the intended start of commissioning must be given to the relevant planning authority prior to such start.

Notice of completion of commissioning

3. Notice of the intended completion of commissioning must be given to the relevant planning authority prior to such completion.

Detailed design

- 4.—(1) No part of the authorised development comprised in Work No. 1A (the generating station) other than site raising may commence until details of the following for that part have been submitted to and in respect of sub-paragraph (b) after consultation with the highway authority approved by the relevant planning authority:
- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings;
 - (b) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes and pedestrian facilities and routes;
 - (c) drainage design, storage tanks and silos; and
 - (d) finished floor levels.
- (2) No part of the authorised development comprised in Work No. 1B (temporary laydown and construction) other than site raising may commence until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority:
- (a) the layout, including areas for hardstanding, storage of materials, loading and unloading, vehicle parking and turning facilities; and
 - (b) access points.
- (3) No part of the site raising comprised in Work Nos. 1A and 1B may commence until details of the following for that part have been submitted to and approved by the relevant planning authority:
- (a) the existing site level;
 - (b) the material to be used for site raising;
 - (c) the extent of the area to be raised; and
 - (d) the finished site level.
- (4) No part of the authorised development comprised in Work No. 2 (fuel intake, limestone and gypsum and fuel ash handling transportation infrastructure) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority –
- (a) the routes of the conveyors and other plant for the transport of fuel, limestone, gypsum and fuel ash; and

- (b) the siting, layout, scale and external appearance of any permanent buildings, structures, conveyors or other plant.

(5) No part of the authorised development comprised in Work No. 4 (electrical connection) may commence until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority –

- (a) the route and method of installation of the electrical cable; and
- (b) the siting, layout, scale and external appearance of any permanent buildings, structures or above ground apparatus.

(6) No part of the authorised development comprised in Work No. 5 (water connections) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority –

- (a) the route and method of installation of the water connections and pipelines; and
- (b) the siting, layout, scale and external appearance of any permanent buildings, structures or plant.

(7) No part of the authorised development comprised in Work No. 6 (the jetty hardstanding area) may commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (b) after consultation with the highway authority, approved by the relevant planning authority:

- (a) the layout, including areas for hardstanding, storage of materials, loading and unloading, vehicle parking and turning facilities; and
- (b) access points.

(8) No part of the authorised development comprised in Work No. 7 (the 11kV diversion works) may commence until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority:

- (a) the route and method of installation of the electrical cable; and
- (b) the siting, layout, scale and external appearance of any permanent buildings, structures or above ground apparatus..

(9) No part of the authorised development comprised in Work No. 8 (substation infrastructure) may commence until details of the following for that part have been submitted to and approved by the relevant planning authority:

- (a) the route and method of connecting the electrical cable to the substation; and
- (b) the siting, layout, scale and external appearance of any permanent buildings, structures or above ground apparatus.

(10) All details submitted under sub-paragraphs (1), (2), (3), (4), (5), (6), (7), (8) and (9) must, where relevant, be in accordance with the design and scale parameters set out in Table 5.1 in the design and access statement.

(11) Work Nos. 1A, 1B, 2, 4, 5, 6, 7 and 8 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

Provision of landscaping

5.—(1) No part of the authorised development other than site raising may commence until a detailed landscaping scheme for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must include details of all proposed hard and soft landscaping works, including—

- (a) shrub and tree planting, including between Work No. 1A and Drax Augustinian Priory Scheduled Monument;
- (b) the treatment of hard surfaced areas; and
- (c) an implementation timetable and maintenance plan.

(3) The scheme submitted and approved must be in accordance with the indicative landscaping and biodiversity framework plan and the biodiversity mitigation and management plan approved pursuant to requirement 16, unless otherwise agreed with the relevant planning authority.

Implementation and maintenance of landscaping

6.—(1) All landscaping works must be carried out in accordance with the landscaping scheme (including the implementation timetable and maintenance plan) approved under requirement 5 unless otherwise agreed with the relevant planning authority.

(2) Any tree or shrub planted as part of an approved landscaping scheme 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, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(3) The undertaker must implement the maintenance plan during the operation and decommissioning of the authorised development unless otherwise agreed with the relevant planning authority.

Public rights of way diversions

7.—(1) No part of the authorised development may commence until a written public rights of way management plan for any section(s) of public rights of way to be extinguished, diverted or temporarily closed for that part has been submitted to and, after consultation with the highway authority, approved in writing by the relevant planning authority.

(2) The public rights of way management plan must thereafter be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

External lighting – construction

8.—(1) No part of the authorised development may commence until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement no. 28) has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must include measures to minimise and otherwise mitigate any artificial light emissions during construction of the authorised development.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

External lighting – operation

9.—(1) The generating station may not be brought into commercial use until a scheme for all permanent external lighting to be installed during operation (with the exception of the aviation warning lighting required by virtue of requirement no. 28) has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must include measures to minimise and otherwise mitigate any artificial light emissions during operation of the authorised development.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

10.—(1) No part of the authorised development may commence until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access between any part of the Order land and the

public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic, has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The details submitted pursuant to sub-paragraph (1) must provide for any access point directly on to Pear Tree Avenue to only be used in an emergency and must include details of the barrier or other control system to prevent its use other than in emergencies

(3) The accesses to the public highway must be constructed in accordance with the approved details unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

(4) The authorised development may not be brought into commercial use until any permanent accesses to the public highway have been constructed or modified (as relevant).

Means of enclosure

11.—(1) No part of the authorised development may commence until details of any proposed temporary means of enclosure (including a programme for the removal of all temporary means of enclosure), have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction of the authorised development.

(3) The generating station may not be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) The authorised development may not be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

Surface and foul water drainage

12.—(1) No part of the authorised development may commence until details of the temporary surface and foul water drainage systems (including means of pollution control, in accordance with the construction environmental management plan, and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development), have, for that part, been submitted to, and after consultation with the Environment Agency, approved by the relevant planning authority.

(2) Details of the permanent surface and foul water drainage systems (including a programme for their implementation) must be submitted to and, after consultation with the Environment Agency and the Internal Drainage Board approved by the relevant planning authority prior to the start of construction of any part of those systems. The details of the surface water drainage systems shall be based on sustainable drainage principles and must include:

- (a) provision of an agreed minimum volume of attenuation storage for the area of the Order land being drained north of Carr Dyke, in order to safely contain surface water run off resulting from the 1 in 100 rainfall event plus an allowance for climate change;
- (b) provision of a minimum of 1,150 cubic metres of attenuation storage for the area of the Order land being drained south of Carr Dyke; and
- (c) a management and maintenance plan to ensure that the systems remain fully operational throughout the lifetime of the authorised development.

(3) Surface water from the area of the Order land north of Carr Dyke must (along with treated process water) be discharged at a rate that is no greater than that permitted by the discharge

licence for the Drax Power Station site (or such other licence to discharge as may replace or vary it).

(4) Surface water from the area of the Order land south of Carr Dyke must be discharged at a rate agreed with the Internal Drainage Board.

(5) The details submitted pursuant to sub-paragraphs (1) and (2) must be in accordance with the principles set out in the environmental statement, including section 4.2 of the flood risk assessment (environmental statement volume 2 chapter C.1) and the surface water and flood risk technical report (environmental statement volume 2 chapter C)

(6) The temporary and permanent surface and foul water drainage systems must each be constructed in accordance with the relevant approved details unless otherwise agreed with the relevant planning authority.

(7) The authorised development may not be brought into commercial use until the permanent surface and foul water drainage systems have been constructed.

Flood risk mitigation

13.—(1) No part of the authorised development may commence until a scheme for the mitigation of flood risk during construction, commissioning and operation, has, for that part, been submitted to, and after consultation with the Environment Agency, been approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in the environmental statement, including the flood risk assessment (environmental statement volume 2, Chapter C.1) and incorporate:

- (a) raising the area of the generating station site (Work No 1A) to a minimum of 5.0 metres above ordnance datum;
- (b) a finished floor level for all buildings of a minimum of 5.13 metres above ordnance datum; and
- (c) the level for all sensitive equipment to be a minimum of 5.13 metres above ordnance datum.

(3) The approved flood risk mitigation scheme must be implemented in accordance with the approved details (unless otherwise agreed with the relevant planning authority) and maintained (as relevant to each stage) throughout the construction, commissioning and operation of the authorised development.

(4) No part of the authorised development may commence until a construction flood emergency response and contingency plan, has for that part, been submitted to, and after consultation with the Environment Agency, been approved by the relevant planning authority.

(5) The authorised development may not be commissioned until a commissioning and operation flood emergency response and contingency plan for the authorised development has been submitted to, and after consultation with the Environment Agency, been approved by the relevant planning authority.

(6) The flood emergency response and contingency plans approved pursuant to sub-paragraphs 4 and 5 must be implemented (as relevant to each stage) throughout the construction, commissioning and operation of the authorised development

(7) The scheme submitted pursuant to sub-paragraph (1) may comprise different schemes relating to different stages of the authorised development but which must between them cover the construction, commissioning and operational stages of the authorised development.

Contaminated land and groundwater

14.—(1) No part of the authorised development may commence until a scheme to deal with the contamination of land (including groundwater), which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been

submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved—

- (a) must be in accordance with the principles set out in the environmental statement and the environmental statement mitigation annex; and
- (b) may be included in the construction environmental management plan.

(3) The scheme must include an investigation and assessment report to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Archaeology

15.—(1) No part of the authorised development may commence until a scheme of archaeological investigation for that part has been submitted to and, after consultation with Historic England and the North Yorkshire County Council archaeological advisor, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in the environmental statement and the environmental statement mitigation annex.

(3) The scheme must identify areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) Any archaeological investigations implemented must be carried out –

- (a) in accordance with the approved scheme, and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority unless otherwise agreed with the relevant planning authority.

Biodiversity mitigation and management plan

16.—(1) No part of the authorised development other than site raising may commence until a biodiversity mitigation and management plan has been submitted to and, after consultation with Natural England and Yorkshire Wildlife Trust, approved by the relevant planning authority.

(2) The plan submitted and approved must—

- (a) be in accordance with the principles of the environmental statement, the environmental statement mitigation annex, the indicative landscaping and biodiversity framework plan and the landscaping scheme approved pursuant to requirement 5; and
- (b) include an implementation timetable and details relating to maintenance and management.

(3) The plan must be implemented and maintained as approved unless otherwise agreed with the relevant planning authority.

European protected species

17.—(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any European protected species is present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a protected species is shown to be present, no authorised development of that part may be begun until, after consultation with Natural England, a scheme of protection and

mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) The authorised development must be implemented in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Construction environmental management plan

18.—(1) No part of the authorised development may commence until a construction environmental management plan has, for that part, been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the environmental statement and the environmental statement mitigation annex and incorporate;

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a sediment control plan
- (c) a soil management plan
- (d) a scheme for the control of any dust, smoke or steam emissions;
- (e) a piling concept document;
- (f) a scheme for environmental monitoring and reporting during the construction of the authorised development including measures for undertaking any corrective actions; and
- (g) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating such impacts during the construction of the authorised development.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

Construction traffic routing and travel plan

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

(2) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the anticipated number of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment and any temporary removal of street furniture;
- (d) measures to encourage the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact;
- (e) details of parking for construction personnel within the construction site(s);
- (f) details of pre-construction surveys of the carriageway surfaces on New Road (from the point at the entrance to the materials handling gate of the existing Drax Power Station site north to the junction with Pear Tree Avenue) and on Pear Tree Avenue (from the junction with New Road to the proposed emergency access point on to Pear Tree Avenue from laydown area no. 4 (part of Work No. 1B), and including the standard to which any

damage by vehicles associated with the authorised development caused to those carriageway surfaces during construction is to be repaired.

(3) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site(s), indicating to drivers the approved routes for traffic entering and leaving the construction site(s).

(4) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

Construction hours

20. Subject to sub-paragraph (2) construction work relating to the authorised development, including the delivery or removal of materials, plant and machinery, must not take place outside the hours of—

- (a) 0700 and 1900 hours on Monday to Friday; and
- (b) 0700 and 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction work or the delivery or removal of materials, plant and machinery or the delivery of abnormal indivisible loads, where these—

- (a) do not exceed a noise limit of 45dB LAeq, night (2300 to 0700 hours) and 55dB LAeq, (during evening and weekend periods defined in BS5228- 1:2009 Table E.1) at any residential property specified in Table 3.1, Chapter B, Volume 2 of the environmental statement; or
- (b) are carried out with the prior approval of the relevant planning authority under section 61 ‘Prior consent for work on construction sites’ of the Control of Pollution Act 1974; or
- (c) are associated with an emergency.

(3) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(4) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

Accumulations and deposits

21.—(1) No part of the authorised development other than site raising may commence until a scheme for the management of relevant accumulations and deposits for that part during construction has been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented before and maintained during the construction of that part of the authorised development unless otherwise agreed with the relevant planning authority.

(3) The authorised development may not be commissioned until a scheme for the management of accumulations and deposits that may arise during operation has been submitted to and approved by the relevant planning authority.

(4) The approved scheme must be implemented before the authorised development is brought into commercial use and maintained during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(5) In paragraph (1), “relevant accumulations and deposits” means accumulations and deposits—

- (a) which may occur during the construction and operation of the authorised development, and
- (b) the effects of which may be noticeable from outside the Order limits.

Restoration of land used temporarily for construction

22.—(1) The authorised development may not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub-paragraph (1);
- (b) the landscaping scheme approved in accordance with requirement 5; and
- (c) the biodiversity mitigation and management plan approved in accordance with requirement 16.

Operational noise

23.—(1) The authorised development may not be brought into commercial use until an operational noise monitoring and mitigation scheme has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must ensure that the level of noise emitted from the authorised development following commissioning shall not exceed the free-field noise levels listed in the fourth and fifth columns of the following table, except in the case of an emergency, or unless otherwise agreed with the relevant planning authority:

<i>Receptor Number</i>	<i>Receptor at which noise level is measured</i>	<i>Background noise levels (Daytime)</i>	<i>Day time noise rating levels (0700 to 2300) (as per BS4142:2014)</i>	<i>Night time noise levels (2300 to 0700) (as per WHO guidelines and BS8233)</i>
		dBLA90(T) where T is the daytime period	dBLAeq(1hour)	dBLAeq(8hour)
1	Foreman’s Cottage	35	Background +14dB	See paragraph 3(e)
2	Wren Hall	35	Background + 5dB	40
3	Camblesforth	43	Background + 5dB	40
4	Barlow	35	Background + 5dB	40
5	Drax Abbey Farm	36	Background + 10dB	See paragraph 3(e)
6	Long Drax	32	Background + 5dB	40
7	Old Lodge	32	Background + 5dB	40
8	Landing Lane	32	Background + 5dB	40

- (3) The scheme submitted pursuant to sub-paragraph (1) must include:
- (a) a programme for the monitoring of noise generated by the operation of the authorised development;
 - (b) the locations at which operational noise will be monitored;
 - (c) the method of noise measurement;
 - (d) the reporting of noise measurements (including those required by sub-paragraph (5)) to the relevant planning authority; and
 - (e) the noise mitigation measures and acoustic ventilation to be implemented at receptor number 1 (Foreman's Cottage) and receptor number 5 (Drax Abbey Farm), including a programme for their implementation, with the aim to achieve an acceptable noise level inside bedrooms between the hours of 2300 and 0700, consistent with World Health Organisation guidelines and British Standard 8233 (30 dB LAeq, 2300 and 0700), as far as reasonably practicable.

(4) The operational noise monitoring and mitigation scheme must be implemented as approved, and the noise levels in sub-paragraph (2) must be adhered to at all times during normal operation of the authorised development, except in an emergency, or unless otherwise approved by the relevant planning authority.

(5) Overall sound at residential properties from the operation of the authorised development must not exhibit any significant tonal content as defined using the objective method for assessing audibility of tones in Annex D of British Standard 4142:2014 and such that the measured tonal correction (Kt) should equal zero decibels.

(6) Mitigation must be applied during the procurement and commissioning of the authorised development in order to demonstrate that sub-paragraph (5) can be complied with and if any audible tonal noise is observed during commissioning of the authorised development, it must be analysed to identify the cause and corrective measures must be applied so as to comply with sub-paragraph (5).

Operational traffic routing and travel plan

24.—(1) The authorised development may not be brought into commercial use until an operational traffic routing and travel plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

- (2) The plan submitted and approved must include details of –
- (a) the routes to be used for the transport of bulk materials to and from the authorised development;
 - (b) measures to encourage the use of sustainable transport modes to and from the authorised development by operational staff; and
 - (c) the responsibility for the implementation and monitoring and review of those measures.

(3) The plan must be implemented as approved before the authorised development is brought into commercial use and must be maintained during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Combined heat and power

25.—(1) The authorised development may not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the relevant planning authority for its approval a report (“the CHP review”) updating the combined heat and power assessment.

(4) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the lifetime of the authorised development that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

(8) In sub-paragraph (3), “the combined heat and power assessment” means the document certified as the combined heat and power assessment by the Secretary of State for the purposes of this Order under article 37 (certification of plans etc.).

Waste management on site – construction and operational wastes

26.—(1) No part of the authorised development other than site raising may commence until a construction site waste management plan for that part has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the environmental statement and the environmental statement mitigation annex.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

(4) The authorised development may not be brought into commercial use until an operational waste management plan has been submitted to and approved by the relevant planning authority.

(5) The plan submitted and approved must be in accordance with the principles set out in the environmental statement and the environmental statement mitigation annex.

(6) The plan must be implemented as approved before the authorised development is brought into commercial use unless otherwise agreed with the relevant planning authority.

Decommissioning

27.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning and restoration scheme.

(2) No decommissioning works may be carried out until the relevant planning authority has approved the scheme.

(3) The scheme submitted and approved must be in accordance with the principles set out in the environmental statement and the environmental statement mitigation annex.

(4) The scheme submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;

- (d) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(5) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

Aviation warning lighting

28.—(1) No part of the authorised development that requires an aviation warning light may commence until details of the aviation warning lighting to be installed for that part have been submitted to, and following consultation with the Civil Aviation Authority, approved by the relevant planning authority.

(2) All cranes used in the construction of the authorised development must comply with applicable Civil Aviation Authority guidance with respect to aviation warning lighting.

(3) The aviation warning lighting approved pursuant to sub-paragraph (1) must be installed and operated in accordance with the approved details.

Air safety

29. No part of the authorised development other than site raising may commence until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

Carbon capture and storage consents

30.—(1) No part of the authorised development other than site raising may commence until the undertaker has provided evidence to the relevant planning authority that the necessary consents required to enable the construction and operation of the following have been granted or made (as relevant):

- (a) the onshore and offshore carbon dioxide pipelines and other apparatus required to connect the authorised development to an appropriate site or sites for the storage of the carbon dioxide captured during the operation of the authorised development; and
- (b) the storage at that site or sites of the carbon dioxide captured during the operation of the authorised development.

(2) In sub-paragraph (1), “necessary consents” means such of the following as are required for the development or operations described in sub-paragraphs (1)(a) and (1)(b) at the date of the submission of the evidence pursuant to sub-paragraph (1):

- (a) any development consent required by section 31 of the 2008 Act;
- (b) any carbon dioxide storage licence required by section 17 of the Energy Act 2008(a);
- (c) any marine licence required by section 65 of the Marine and Coastal Access Act 2009(b); and
- (d) any pipeline works authorisation required by section 14 of the Petroleum Act 1998(c)

or such other licence, authorisation or consent as may respectively replace the licences, authorisations and consents listed in sub-paragraphs (a) to (d) inclusive.

(3) No part of the authorised development other than site raising may commence until the undertaker has provided evidence to the relevant planning authority that any environmental permit

(a) 2008 c.32
 (b) 2009 (c.23)
 (c) 1998 c.17

required by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010 in relation to the authorised development has been issued.

Employment, skills and training plan

31.—(1) No part of the authorised development may commence until a plan detailing arrangements to promote and support employment, skills and training development opportunities for local residents during construction and employment opportunities during operation has been submitted to and, following consultation with North Yorkshire County Council, approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

Requirement for written approval

32. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Changes approved by the relevant planning authority

33. Where the words “unless otherwise agreed with the relevant planning authority” appear in requirements 1 to 31, any such approval may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Amendments to approved details

34. 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 are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Interpretation of this Schedule

35. In this Schedule—

“commence” means beginning to carry out any material operation as defined by Section 155 of the 2008 Act forming part of the relevant part of the authorised development other than permitted preliminary works and “commencement” is to be construed accordingly;

“permitted preliminary works” means environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors, the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority;

“site raising”, means the works included in Work No. 1A(a), Work No. 1A(aa) and such site access works, site raising and hardstanding as are to take place within Work No. 1B;

“European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to street works</i>	<i>Description of the street works</i>
In the District of Selby	New Road	Works for the installation and maintenance of Work No. 4 within the limits of deviation for Work No. 4
In the District of Selby	New Road	Works to widen the carriageway so as to permit two-way passing traffic and to strengthen the existing carriageway on that part of the street hatched blue between the points marked 11 and 12 on the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new temporary access comprising part of Work. No. 1B at the point marked 13 on the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new permanent access comprising part of Work. No. 1B at the point marked 14 on the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new temporary access comprising part of Work. No. 1B at the point marked 15 on the access and rights of way plans
In the District of Selby	New Road / Private road	Works for the improvement of an existing access on New Road at the point marked 16 on the access and rights of way plans, for the creation of two new accesses at the point marked 17 on the access and rights of way plans and to improve an existing access at the point marked 18 on the access and rights of way plans
In the District of Selby	Pear Tree Avenue	Works for the provision of a new temporary access comprising part of Work. No. 1B at the point marked 19 on

		the access and rights of way plans
In the District of Selby	Pear Tree Avenue	Works for the installation and maintenance of Work No. 7 within the limits of deviation for Work No. 7

SCHEDULE 4

Article 10

STREETS SUBJECT TO PERMANENT AND TEMPORARY
ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Selby	New Road	Creation of new access at the point marked 14 on the access and rights of way plans to provide permanent access to Work No. 1B
In the District of Selby	New Road	Widening of the carriageway so as to permit two-way passing traffic and strengthening the existing carriageway on that part of the street hatched blue between the points marked 11 and 12 on the access and rights of way plans
In the District of Selby	New Road / Private road	Works to existing access on New Road at the point marked 16 on the access and rights of way plans, creation of two new accesses on the private road at the point marked 17 on the access and rights of way plans and works to existing access on the private road at the point marked 18 on the access and rights of way plans

PART 2

TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the District of Selby	New Road	Creation of new access at the point marked 13 on the access and rights of way plans including the lowering of the

		levels of the kerb to provide temporary access to Work No. 1B
In the District of Selby	New Road	Creation of new access at the point marked 15 on the access and rights of way plans to provide temporary access to Work No. 1B
In the District of Selby	Pear Tree Avenue	Creation of new access at the point marked 19 on the access and rights of way plans to provide temporary access to Work No. 1B

SCHEDULE 5

Article 11

ACCESS

PART 1

THOSE PARTS OF THE ACCESSSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of relevant part of access</i>
In the District of Selby	New Road	Length of New Road to be improved shown hatched blue between the points marked 11 and 12 on the access and rights of way plans

PART 2

THOSE PARTS OF THE ACCESSSES TO BE MAINTAINED BY THE STREET AUTHORITY

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Street</i>	<i>Description of access</i>
In the District of Selby	New Road	New access hatched red at the point marked 14 on the access and rights of way plans
In the District of Selby	New Road / Private road	Existing access on to New Road hatched red at the point marked 16 on the access and rights of way plans, two new accesses at the point marked 17 on the access and rights of

		way plans and existing access at the point marked 18 on the access and rights of way plans
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PART 3

THOSE WORKS TO RESTORE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	Works to remove temporary new access at the point marked 13 on the access and rights of way plans
In the District of Selby	New Road	Works to remove temporary new access at the point marked 15 on the access and rights of way plans
In the District of Selby	Pear Tree Avenue	Works to remove temporary new access at the point marked 19 on the access and rights of way plans

SCHEDULE 6

Article 12

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of extent of temporary stopping up</i>
In the District of Selby	New Road	Temporary closure, required for works to the street, of the length of New Road between the points marked 11 and 12 on the access and rights of way plans, and of part of New Road at the points marked 13, 14, 15 and 16 on the access and rights of way plans required for the construction, improvement or removal of access points
In the District of Selby	New Road	Temporary closure of the length of New Road within the limits of deviation for Work No. 4 and required for the carrying out of Work No. 4
In the District of Selby	Pear Tree Avenue	Temporary closure of part of Pear Tree Avenue within the limits of deviation for Work No. 7 and required for the carrying out of Work No.7
In the District of Selby	Pear Tree Avenue	Temporary closure of part of Pear Tree Avenue at the point marked 19 on the access and rights of way plans required for the construction or removal of an access point

SCHEDULE 7

Article 12

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>
In the District of Selby	Footpaths 35.6/11/1 and 35.47/10/1 shown marked with a solid blue line on the access and rights of way plans	Between points 2 and 9 on the access and rights of way plans
In the District of Selby	Footpaths 35.6/12 and 35.47/6 shown marked with a solid pink line on the access and rights of way plans	Between points 1 and 2 on the access and rights of way plans
In the District of Selby	Footpath 35.47/1 shown marked with a solid pink lines on the access and rights of way plans	Between points 7 and 8 on the access and rights of way plans
In the District of Selby	The footpaths proposed to be created pursuant to the local footpath order shown marked with a solid green line on the access and rights of way plans	Between points 3, 4, 5, 6 and 2 on the access and rights of way plans, and between points 8 and 10 on the access and rights of way plans

SCHEDULE 8

Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

1. In this Schedule 8 a reference to the infrastructure relating to a Work No. is a reference to the development, infrastructure or equipment (as relevant) listed in Part 1 of Schedule 1 (authorised development and approved plans) in relation to the relevant Work No.

<i>(1)</i>	<i>(2)</i>
<i>Number of land shown on the land plans</i>	<i>Rights etc which may be acquired</i>
5, 6, 7, 8, 9, 10, 11, 12, 13 and 14	The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the construction, installation and use of the Work No. 2 infrastructure together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the Work No. 2 infrastructure.
1, 2, 3 and 4	The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the transport, deposition, storage and removal of ash, together with the right to transport, deposit, store and remove ash arising from the authorised development, and to carry out any ancillary earthworks and operations.
32, 33, 35, 36, 37, 38, 46, 53, 54, 55, 56	<p>The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation and use of the Work No. 4 infrastructure, together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the cables and other apparatus.</p> <p>The right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
46, 49, 50, 51, 52 53, 54, 55, 56, 57, 58, 63, 64	The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation and use of the Work No. 5

	<p>infrastructure, together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the Work No. 5 infrastructure.</p> <p>The right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
26, 28, 29, 30 and 31	<p>The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation and use of the Work No. 7 infrastructure, together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the Work No. 7 infrastructure.</p> <p>The right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
34	<p>The right for the undertaker and all persons authorised on its behalf to enter, with or without vehicles, plant and machinery for all purposes in connection with the Work No. 8 infrastructure together with the right to install, retain, use, maintain, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve the Work No. 8 infrastructure.</p>
33, 50, 51 and 54	<p>A pedestrian and vehicular right of way for the undertaker and all persons authorised on its behalf for all purposes connected with the construction, operation, maintenance and decommissioning of the authorised development.</p>
5	<p>A pedestrian and vehicular right of way for the undertaker and all persons authorised on its behalf for all purposes connected with emergency access or egress required in relation to the construction, operation, maintenance and decommissioning of the authorised development.</p>

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) is to have effect subject to the modifications set out in sub-paragraph (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” substitute the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” substitute the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraph (a) and (b) substitute the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” substitute the words “right or restrictive covenant over or affecting the whole of the park or garden”;
- (c) for the words “part proposed” substitute the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” substitute the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act is to apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) substitute the following section—

(a) 1973 c.26

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard is to be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provisions as to divided land) substitute the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where the land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

The White Rose CCS (Generating Station) Order 201[●] (“the Order”) is to, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are to be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is to be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is to be deemed for this purpose to have been created on that date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is to be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) is to apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is to be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of land shown on the land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
Plots 17, 18, 19, 20 and 21	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plot 22	Temporary use to carry out works to the street and to facilitate the construction of new accesses
Plots 23, 24, 25, 26 and 27	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plots 45, 46, 47, 52 and 53	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plots 48 and 49	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plots 58, 59, 60, 61, 62, 63 and 65	Temporary use as laydown, construction compound and similar uses required to facilitate construction of Work Nos. 1A, 2, 4, 5, 7 and 8
Plots 66, 67, 68 and 69	Temporary use as jetty and laydown area

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

1.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of their decision on the application within a period of nine weeks beginning with:

- (a) the day immediately following that on which the application is received by the authority;
- (b) 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 in writing by the undertaker and the relevant planning authority.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where:

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order; and
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved,

then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant planning authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within twenty-one days of receipt of the application.

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

- 3.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.
- (2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of:
- (a) the application being rejected as invalidly made; or
 - (b) the relevant planning authority failing to determine the application within eight weeks from the date on which it is received unless:
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to sub-paragraph 1(c) of this Schedule.

Appeals

- 4.—(1) The undertaker may appeal in the event that:
- (a) the relevant planning authority refuses an application for any consent, 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 period specified 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 relevant planning authority is not necessary for consideration of the application; or
 - (d) on receipt of any further information requested, the relevant planning 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 is to be as follows:
- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
 - (b) The Secretary of State is to appoint a person within twenty business days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
 - (c) The relevant planning authority and the requirement consultee must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must 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;
 - (d) The appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (c) above; and

(a) S.I. 2012/2920. There are amendments to those Regulations which are not relevant to this Order

- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to paragraph sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five (5) business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(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 relevant planning 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 him 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 relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him 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 is to 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 is to be deemed to be an approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant planning authority. The relevant planning 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) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) The appointed person may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten years experience.

(11) Save where a direction is given pursuant to sub-paragraph 12 requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant planning 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 is to be made, the appointed person must 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 11

5. In this Schedule 11:

“business day” means a day other than a 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;

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. The following provisions have effect for the protection of the utility undertakers referred to in this Part of this Schedule, unless otherwise agreed in writing at any time between the undertaker and the utility undertaker concerned.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that electricity undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991 and Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and in each case includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“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;

“pipeline” means the whole or any part of a pipeline belonging to or maintained by a utility undertaker and includes any ancillary works and apparatus;

“plan” includes a section and description of the works to be executed;

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On-street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of apparatus

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

5. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(1) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give the utility undertaker in question written notice of that requirement, together with a plan of the work proposed.

(2) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(3) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(4) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Retained apparatus: protection

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in sub-paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under sub-paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under subparagraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with subparagraph (2) in so far as is reasonably practicable in the circumstances.

Cathodic protection testing

7. Where in the reasonable opinion of the utility undertaker—

- (a) the authorised development might interfere with the existing cathodic protection forming part of a pipeline; or
- (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised development,

the utility undertaker to whom the pipeline belongs, or who maintains that pipeline, and the undertaker must co-operate in undertaking the tests which the utility undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an utility undertaker the reasonable expenses reasonably incurred by that utility undertaker in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus; or
- (b) the construction of any new apparatus,

which may be required in consequence of the execution of any such works as are required under this Part of this Schedule.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the utility undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph

would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) must, 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 the utility undertaker 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.

Co-operation

9. Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under sub-paragraph 5(2)) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the utility undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development; and each utility undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

Arbitration

10. Any difference or dispute arising between the undertaker and a utility undertaker under this Part of this Schedule is, unless otherwise agreed in writing between the undertaker and that utility undertaker, to be determined by arbitration in accordance with article 38 (arbitration).

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

Effect

11. For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

Interpretation

12. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus ” has the same meaning as in the electronic communications code;

(a) 2003 c21

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

On-street apparatus

13. The exercise of the powers of article 31 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(a) as if the undertaker were a “relevant undertaker” for the purposes of that paragraph.

Enactments and agreements in respect of apparatus in the promoter’s land

14. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Arbitration

15. Any difference or dispute arising between the undertaker and an operator under this Part of this Schedule is, unless otherwise agreed in writing between the undertaker and that operator, to be referred to and settled by arbitration under article 38 (arbitration)

(a) 1984 c.12

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Capture Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a coal and biomass fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 37 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [●].

APPENDIX B: EXAMINATION LIBRARY INCLUDING RIES

EXAMINATION LIBRARY INCLUDING RIES

Examination Library - Index	
Category	Reference
<u>Application Documents</u> As submitted and amended versions received before the Preliminary Meeting. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<u>Adequacy of Consultation responses</u>	AoC-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the ExA</u> Includes Examining Authority's questions, s55, and post acceptance s51)	PD-xxx
<u>Additional Submissions</u> Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<u>Events and Hearings</u> Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<u>Representations – by Deadline</u>	
<u>Deadline I:</u> Deadline for receipt of: <ul style="list-style-type: none"> • Comments on relevant representations (RRs) • Summaries of all RRs exceeding 1500 words • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1500 words • Local Impact Report from any local authorities • Statements of Common Ground requested by ExA – see Annex G • Responses to ExA's first written questions • Comments on any additional submissions (non-material change of application documents dated 13 April 2015 by applicant) • Comments on, and suggested changes to, the draft Development Consent Order Notifications: <ul style="list-style-type: none"> • Notification by Statutory Parties to inform the ExA of a wish to be considered an interested party • Notification of wish to speak at a compulsory acquisition hearing • Notification of wish to speak at the issue specific hearing on the draft Development Consent Order (DCO) • Notification of wish to speak at issue specific hearing on environmental issues • Notification of wish to speak at an open floor hearing • Notification of wish to attend accompanied site inspection 	REP1-xxx

<p><u>Deadline II:</u></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to ExA's first written questions • Comments on SoCGs • Revised draft DCO from applicant • Applicant's response to comments received by Deadline I on non-material change to application documents, dated 13 April 2015 	REP2-xxx
<p><u>Deadline III:</u></p> <ul style="list-style-type: none"> • Report compiled from responses to the Applicant's notification of the non-material amendments to the DCO application and updates to the application documents dated 13 April 2015 	REP3-xxx
<p><u>Deadline IV:</u></p> <ul style="list-style-type: none"> • Post-Hearing documents including any written summary of an oral case put at any hearing • Comments on any further information received by the ExA for Deadline II 	REP4-xxx
<p><u>Deadline V:</u></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to ExA's second written questions • Applicants revised draft DCO taking account of issues raised and comments to date 	REP5-xxx
<p><u>Deadline VI:</u></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on applicant's revised draft DCO • Comments on responses to ExA's second written questions 	REP6-xxx
<p><u>Deadline VII:</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Any updated SoCGs, • Any written comments on the ExA's revised dDCO • Any written comments on the ExA's RIES • Response to further information requested by the ExA for this deadline 	REP7-xxx
<p><u>Deadline VIII:</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Responses on the additional submission (Project and Funding Update) received by the applicant • Comments on any further information received by the ExA for Deadline VII • Any further requests for information 	REP8-xxx
<p><u>Deadline IX:</u></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Comments, on responses to the additional submission (Project and Funding Update) received by the applicant • Comments on any information and/responses received by the ExA for Deadline VIII • Any further requests for information 	REP9-xxx
<p><u>Other Documents</u></p> <p>(includes s127/131/138 information, applicant's hearing notices, includes s56, s58 and s59 certificates, and transboundary documents)</p>	OD-xxx

White Rose Carbon Capture and Storage Project Examination Library

Application Documents

APP-001	<u>1.1 Application Cover Letter</u>
APP-002	<u>1.3 Application Index - SUPERSEDED</u>
APP-003	<u>1.4 Application Form</u>
APP-004	<u>1.5 Notices for Statutory Publicity</u>
APP-005	<u>2.1 Draft Development Consent Order - SUPERSEDED</u>
APP-006	<u>2.2 Explanatory Memorandum - SUPERSEDED</u>
APP-007	<u>2.3 Draft DCO - Comparison with Model Provisions</u>
APP-008	<u>3.1 Book of Reference - SUPERSEDED</u>
APP-009	<u>3.2 Statement of Reasons - SUPERSEDED</u>
APP-010	<u>3.3 Funding Statement</u>
APP-011	<u>4.0 Overall Cover Sheet</u>
APP-012	<u>4.1 Site Location Plan - SUPERSEDED</u>
APP-013	<u>4.2 Land Plan (Key Plan and Sheets 1 - 4) - SUPERSEDED</u>
APP-014	<u>4.3 Works Plan (Key Plan and Sheets 1 - 4) - SUPERSEDED</u>
APP-015	<u>4.4 Access and Rights of Way Plans (Key Plan and Sheets 1 - 4) SUPERSEDED</u>
APP-016	<u>4.5 Indicative Generating Station Drawings (Work No. 1A)</u>
APP-017	<u>4.6 Indicative Site Raising Drawing (Work Nos. 1A and 1B)</u>
APP-018	<u>4.7 Indicative Fuel Intake Limestone and Gypsum and Fuel Ash Handling and Transportation Infrastructure Drawing (Work No. 2)</u>
APP-019	<u>4.8 Indicative Electrical Connection Routes (Work No. 4)</u>
APP-020	<u>4.9 Indicative Drainage Plan</u>
APP-021	<u>4.10 Indicative Landscaping and Biodiveristy Framework Plan</u>
APP-022	<u>5.1 Consultation Report</u>
APP-023	<u>5.1.1 Consultation Report Appendices 3.1 - 7.7</u>
APP-024	<u>5.1.2 Consultation Report Appendices 7.8 - 7.17</u>
APP-025	<u>5.1.3 Consultation Report Appendices 7.18 - 8.1</u>
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APP-027	<u>5.1.5 Consultation Report Appendices 8.3 - 12.2</u>
APP-028	<u>5.2 Grid Connection Statement SUPERSEDED</u>
APP-029	<u>5.3 Other Consents and Licences</u>
APP-030	<u>5.4 Planning Statement</u>
APP-031	<u>5.5 Design and Access Statement</u>
APP-032	<u>5.6 Combined Heat and Power Assessment</u>
APP-033	<u>5.7 Carbon Capture Storage (CCS) and Carbon Capture and Readiness (CCR) Statement</u>
APP-034	<u>6.1 Environmental Statement - Non Technical Summary</u>
APP-035	<u>6.2 Environmental Statement - Volume 1 (Main Report)</u>
APP-036	<u>6.3.0 ES Volume 2 (Technical Reports) Cover Sheet and Contents</u>
APP-037	<u>6.3.1 ES Volume 2 Chapter A - Emissions to Atmosphere Technical Report</u>
APP-038	<u>6.3.2 ES Volume 2 Chapter B - Noise and Vibration Technical Report</u>
APP-039	<u>6.3.3 ES Volume 2 Chapter C - Surface Water and Flood Risk Technical Report</u>
APP-040	<u>6.3.4 ES Volume 2 Chapter C.1 - Flood Risk Assessment</u>
APP-041	<u>6.3.5 ES Volume 2 Chapter D - Geology Technical Report</u>
APP-042	<u>6.3.6 ES Volume 2 Chapter D.1 - Geology Annexes</u>
APP-043	<u>6.3.7 ES Volume 2 Chapter E - Transport Assessment</u>

APP-044	<u>6.3.8 ES Volume 2 Chapter F - Socio-economic Characteristics</u>
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APP-046	<u>6.3.10a ES Volume 2 Chapter G.1 - Geophysical Survey Results</u>
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APP-052	<u>6.3.15 ES Volume 2 Confidential Badger Method Statement [Not to be published]</u>
APP-053	<u>6.3.16 ES Volume 2 Confidential Badger Report [Not to be published]</u>
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APP-058	<u>6.4.4 ES Volume 3 Section K.3 - Historic Environment Plan</u>
APP-059	<u>6.4.5 ES Volume 3 Section L - Habitats Regulations Assessment Report</u>
APP-060	<u>6.4.6 ES Volume 3 Section M - Green House Gas Assessment</u>
APP-061	<u>6.4.7 ES Volume 3 Section N - Climate Change Risk Assessment</u>
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APP-076	<u>4.8 - Capture Power Limited - Indicative Route of Electrical Connection for 400 kV Plan</u>
APP-077	<u>5.2 - Grid Connection Statement - Revision 2 - Changes from Submission - Clean Version</u>
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PD-009	<u>Examining Authority's Second Written Questions</u>
PD-010	<u>Rule 17 letter – Notification of procedural decision and request for further information</u>
PD-011	<u>Examining Authority's revised draft Development Consent Order (dDCO)</u>

PD-012	<u>Rule 17 letter - Notification of Request for further information and Variation of timetable (30/09/2015)</u>
PD-013	<u>Rule 17 Notification of request for further information (08/10/2015)</u>
PD-014	<u>Notification of Completion of Examining Authority's Examination (s99)</u>
Additional Submissions	
AS-001	<u>Royal Mail - Notification to become an Interested Party</u>
AS-002	<u>DB Schenker Rail (UK)</u>
AS-003	<u>Environment Agency</u>
AS-004	<u>Homes and Communities Agency</u>
AS-005	<u>Environment Agency - Update & Hearing Attendance</u>
AS-006	<u>National Grid update on negotiations with Capture Power Limited</u>
AS-007	<u>National Grid Electricity Transmission's withdrawal of objections to the DCO</u>
AS-008	<u>Trinity House - Notification to become an Interested Party</u>
AS-009	<u>Yorkshire Water - Letter confirming infrastructure owned and rights held</u>
AS-010	<u>Capture Power Ltd - Additional submission providing a Project and Funding Update</u>
AS-011	<u>NHS - North Yorkshire And Humber Area Team</u>
AS-012	<u>Capture Power Limited - 9.10 - Summary of Noise Mitigation Measures - Rev. 2 (amended version of the document submitted at deadline VII)</u>
AS-013	<u>Northern Powergrid (Yorkshire) plc - Submission updating position in relation to protected provisions</u>
AS-014	<u>Kirkwood Stewart Young - Additional Submission</u>
AS-015	<u>Capture Power Limited - Memorandum of Understanding (Signed)</u>
Events and Hearings	
Preliminary Meeting – 22 April 2015	
EV-001	<u>North Yorkshire County Council Response to Rule 6 Letter</u>
EV-002	<u>Capture Power Ltd Response to Rule 6 Letter</u>
EV-003	<u>Preliminary Meeting audio recording</u>
EV-004	<u>Preliminary Meeting Note</u>
Issue Specific Hearing – Environmental Issues – 1 July 2015	
EV-005	<u>Agenda for the Issue Specific Hearing into Environmental Impact Matters</u>
EV-006	<u>Issue Specific Hearing into Environmental Impact Matters (Audio Recording - PART I)</u>
EV-007	<u>Issue Specific Hearing into Environmental Impact Matters (Audio Recording - PART II)</u>
EV-008	<u>Capture Power Ltd - 6.3.2(i) - Operational Noise – Note on Technical Issues - Rev. 1</u>
Open Floor Hearing – 1 July 2015	
EV-009	<u>Open Floor Hearing (Audio Recording)</u>
Compulsory Acquisition Hearing – 2 July 2015	
EV-010	<u>Agenda for the Compulsory Acquisition Hearing</u>
EV-011	<u>Compulsory Acquisition Hearing (Audio Recording)</u>

Issue Specific Hearing – DCO – 2 July 2015	
EV-012	Agenda for the Issue Specific Hearing into draft Development Consent Order
EV-013	Issue Specific Hearing into draft Development Consent Order (Audio Recording)
Accompanied Site Visits - 3 July 2015	
EV-014	Itinerary for the Accompanied Site Inspection
Representations	
Deadline I – 20 May 2015	
REP1-001	Canal & River Trust - Written Representation and Response to ExA's first written questions
REP1-002	Capture Power Limited - Statement of Common Ground between Capture Power Ltd. and the Environment Agency – Rev. 1
REP1-003	Capture Power Limited - Covering email and notice of attendance at hearings and accompanied site inspection
REP1-004	Capture Power Limited - Comments on Relevant Representations
REP1-005	Capture Power Limited - Response to the Examining Authority's first written questions – Rev. 1
REP1-006	Capture Power Limited - Response to Examining Authority's question 1.4 (appendix 1)
REP1-007	Capture Power Limited - Response to Examining Authority's question 3.1 (appendix 1)
REP1-008	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 1)
REP1-009	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 2)
REP1-010	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 3)
REP1-011	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 4)
REP1-012	Capture Power Limited - Schedule of Statutory Undertakers – Rev. 1
REP1-013	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 5)
REP1-014	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 6)
REP1-015	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 7)
REP1-016	Capture Power Limited - Response to Examining Authority's question 4.1 (appendix 1)
REP1-017	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 8)
REP1-018	Capture Power Limited - Response to Examining Authority's question 3.2 (appendix 9)
REP1-019	Capture Power Limited - Response to Examining Authority's question 4.12 (appendix 1)
REP1-020	Capture Power Limited - Response to Examining Authority's question 4.11 (appendix 1)
REP1-021	Capture Power Limited - Response to Examining Authority's question 4.9 (appendix 1)
REP1-022	Capture Power Limited - Response to Examining Authority's question 4.8 (appendix 1)

REP1-023	<u>Capture Power Limited - ES Volume 3 Section L - Habitats Regulations Assessment Report – Rev. 7</u>
REP1-024	<u>Capture Power Limited - Response to Examining Authority’s question 4.2 (appendix 2)</u>
REP1-025	<u>Capture Power Limited - Response to Examining Authority’s question 5.1 (appendix 1)</u>
REP1-026	<u>Capture Power Limited - Response to Examining Authority’s question 6.6 (appendix 2)</u>
REP1-027	<u>Capture Power Limited - Response to Examining Authority’s question 6.2 (appendix 1)</u>
REP1-028	<u>Capture Power Limited - Response to Examining Authority’s question 6.1 (appendix 1)</u>
REP1-029	<u>Capture Power Limited - Response to Examining Authority’s question 5.6 (appendix 1)</u>
REP1-030	<u>Capture Power Limited - Response to Examining Authority’s question 4.22 (appendix 1)</u>
REP1-031	<u>Capture Power Limited - Response to Examining Authority’s question 6.6 (appendix 1)</u>
REP1-032	<u>Capture Power Limited - Response to Examining Authority’s question 4.15 (appendix 1)</u>
REP1-033	<u>Capture Power Limited - Response to Examining Authority’s question 6.8 (appendix 1)</u>
REP1-034	<u>Capture Power Limited - ES Mitigation Annex – Rev. 1</u>
REP1-035	<u>Capture Power Limited - Response to Examining Authority’s question 15.1 (appendix 1)</u>
REP1-036	<u>Capture Power Limited - Response to Examining Authority’s question 15.1 (appendix 2)</u>
REP1-037	<u>Capture Power Limited - Response to Examining Authority’s question 17.8 (appendix 1)</u>
REP1-038	<u>Capture Power Limited - Response to Examining Authority’s question 17.8 (appendix 3)</u>
REP1-039	<u>Capture Power Limited - Response to Examining Authority’s question 17.9 (appendix 1)</u>
REP1-040	<u>Capture Power Limited - Response to Examining Authority’s question 4.3 (appendix 1)</u>
REP1-041	<u>Capture Power Limited - Statement of Common Ground between Capture Power Ltd. and North Yorkshire County Council and Selby District Council – Rev. 2</u>
REP1-042	<u>Capture Power Limited - Statement of Common Ground between Capture Power Ltd. and the Canal & River Trust – Rev. 1</u>
REP1-043	<u>Capture Power Limited - Statement of Common Ground between Capture Power Ltd. and Natural England – Rev. 1</u>
REP1-044	<u>Capture Power Limited - Statement of Common Ground between Capture Power Ltd. and Historic England – Rev. 1</u>
REP1-045	<u>Capture Power Limited - Statement of Common Ground between Capture Power Ltd. and Yorkshire Wildlife Trust – Rev. 1</u>
REP1-046	<u>Capture Power Limited - Response to Examining Authority’s question 6.1 (appendix 2)</u>
REP1-047	<u>Capture Power Limited - Application Index - Rev. 3</u>
REP1-048	<u>Capture Power Limited - Response to Examining Authority’s question 17.8 (appendix 2)</u>
REP1-049	<u>Environment Agency - Written Representation, hearing and site inspection notifications and information regarding a Statement of Common Ground</u>
REP1-050	<u>Environment Agency - Summary of Relevant Representation</u>

REP1-051	Environment Agency - Summary of Written Representation
REP1-052	Environment Agency - Response to Examining Authority's first written questions
REP1-053	National Farmers Union - Response to Examining Authority's first written questions
REP1-054	Natural England - Written Representation and Response to Examining Authority's first written questions
REP1-055	North Yorkshire County Council and Selby District Council - Response to Examining Authority's first written questions
REP1-056	North Yorkshire County Council and Selby District Council - Local Impact Report
REP1-057	North Yorkshire County Council - Comments on any additional submissions (non-material change of application documents dated 13 April 2015 by applicant)
REP1-058	Royal Mail Group Ltd - Written Representation
REP1-059	Selby District Council - Written Representation
REP1-060	The Crown Estate - Response to Examining Authority's first written questions
REP1-061	Yorkshire Wildlife Trust - Response to Examining Authority's first written questions
Deadline II – 10 June 2015	
REP2-001	Capture Power Ltd - Application Index - Rev. 4
REP2-002	Capture Power Ltd - Draft Development Consent Order - Rev 3 (Track Changes)
REP2-003	Capture Power Ltd - Explanatory Memorandum - Rev 3
REP2-004	Capture Power Ltd - Explanation of Changes made to Draft DCO at Deadline II - Rev 1
REP2-005	Capture Power Ltd - Schedule of Statutory Undertakers - Rev. 1
REP2-006	Capture Power Ltd - Schedule of Third Party Rights Holders - Rev. 1
REP2-007	Capture Power Ltd - Statement of Common Ground between Capture Power Ltd. and the Canal and River Trust - Rev. 2
REP2-008	Capture Power Ltd - Statement of Common Ground between Capture Power Ltd. and Natural England - Rev. 2
REP2-009	Capture Power Ltd - Statement of Common Ground between Capture Power Ltd. and Historic England - Rev. 2
REP2-010	Statement of Common Ground between Capture Power Ltd. and Yorkshire Wildlife Trust - Rev. 2
REP2-011	Capture Power Ltd - Comments on the Local Impact Report, Responses to the Examining Authority's First Written Questions and Written Representations - Rev 1
REP2-012	Capture Power Ltd - Covering email for Deadline II Submission
REP2-013	Environment Agency - Comments on the draft Statement of Common Ground with Capture Power Ltd and in relation to Carbon Capture & Storage and Carbon Capture Readiness
REP2-014	National Farmers Union - Comments on responses to ExA's first written questions
Deadline III – 19 June 2015	
REP3-001	Capture Power Ltd - 1.3 - Application Index - Rev. 5
REP3-002	Capture Power Ltd - 8.1 - SoCG between Capture Power Ltd. and NYCC and Selby DC - Rev. 4
REP3-003	Capture Power Ltd - 8.2 - Signed SoCG between Capture Power Ltd. and the Canal & River Trust - Rev. 2

REP3-004	<u>Capture Power Ltd - 9.4 - Non-statutory Consultation on Non-Material Amendments to the DCO Application - Rev. 1</u>
REP3-005	<u>Capture Power Ltd - Covering email for Deadline III Submission</u>
REP3-006	<u>Capture Power Ltd - Deadline III submission relating to planning permission (2015/0229/EIA)</u>
REP3-007	<u>Capture Power Ltd - SoCG between Capture Power Ltd. and the Environment Agency - Rev. 2</u>
Deadline IV – 8 July 2015	
REP4-001	<u>Capture Power Ltd - 1.3 - Application and Examination Documents Index - Rev. 6</u>
REP4-002	<u>Capture Power Ltd - 3.6 - Compulsory Acquisition Status Update - Affected Parties - Rev. 1</u>
REP4-003	<u>Capture Power Ltd - 3.7- Compulsory Acquisition Funding Statement - Rev. 1</u>
REP4-004	<u>Capture Power Ltd - 4.4 - Access and Rights of Way Plans - Rev. v5</u>
REP4-005	<u>Capture Power Ltd - 8.1 - SoCG between Capture Power Ltd and NYCC and Selby DC - Rev. 6</u>
REP4-006	<u>Capture Power Ltd - 8.3 - Signed SoCG between Ground between Capture Power Ltd. and Natural England - Rev. 2</u>
REP4-007	<u>Capture Power Ltd - 8.4 - Signed SoCG between Ground between Capture Power Ltd. and Historic England - Rev. 2</u>
REP4-008	<u>Capture Power Ltd - 8.5 - SoCG between Ground between Capture Power Ltd. and Yorkshire Wildlife Trust - Rev. 4</u>
REP4-009	<u>Capture Power Ltd - 8.6 - SoCG between Ground between Capture Power Ltd. and Environment Agency - Rev. 5</u>
REP4-010	<u>Capture Power Ltd - 9.5 - Written Submissions - ISH on Environmental Matters - Rev. 1</u>
REP4-011	<u>Capture Power Ltd - 9.6 - Written Submissions - ISH on draft DCO - Rev. 1</u>
REP4-012	<u>Capture Power Ltd - Covering email for Deadline IV</u>
REP4-013	<u>Environment Agency - Deadline 4 Submission</u>
REP4-014	<u>North Yorkshire CC & Selby DC - Comment on Operational Noise</u>
REP4-015	<u>North Yorkshire CC & Selby DC - Landscape Summary</u>
Deadline V – 5 August 2015	
REP5-001	<u>Selby District Council - Response to Examining Authority's second written questions</u>
REP5-002	<u>Capture Power Limited - Covering letter submitted with Deadline V documents</u>
REP5-003	<u>Capture Power Limited - 1.3 - Application and Examination Documents Index - Rev. 7</u>
REP5-004	<u>Capture Power Limited - 2.1 - Draft Development Consent Order (DCO) - Rev. 4</u>
REP5-005	<u>Capture Power Limited - 2.4 - Explanation of changes made to Draft Development Consent Order at Deadline V - Rev. 2</u>
REP5-006	<u>Capture Power Limited - 3.1 - Book of Reference - Rev. 5</u>
REP5-007	<u>Capture Power Limited - 5.3 - Other Consents and Licences - Rev. 2</u>
REP5-008	<u>Capture Power Limited - 6.5 - Environmental Statement (ES) Mitigation Annex - Rev. 2</u>
REP5-009	<u>Capture Power Limited - 8.5 - Signed Statement of Common Ground between Capture Power Ltd and Yorkshire Wildlife Trust - Rev. 5</u>
REP5-010	<u>Capture Power Limited - 8.6 - Signed Statement of Common Ground between Capture Power Ltd and Environment Agency - Rev. 6 - This document also contains an email dated 29 June 2015 confirming</u>

	<u>Environmental Permit Application duly made status.</u>
REP5-011	<u>Capture Power Limited - 9.7 - Applicant's Response to the Examining Authority's Second Written Questions</u>
Deadline VI – 21 August 2015	
REP6-001	<u>Capture Power Ltd - Covering email for Deadline VI Submission</u>
REP6-002	<u>Capture Power Ltd - 1.3 – Application and Examination Documents Index – Rev. 8</u>
REP6-003	<u>Capture Power Ltd - 4.10 – Indicative Landscaping and Biodiveristy Framework Plan (sheet 1) – Rev. 3</u>
REP6-004	<u>Capture Power Ltd - 4.10 – Indicative Landscaping and Biodiveristy Framework Plan (sheet 2) – Rev. 3</u>
REP6-005	<u>Capture Power Ltd - 4.10(i) – Explanation of Changes made to the Indicative Landscaping and Biodiversity Framework Plan</u>
REP6-006	<u>Capture Power Ltd - 5.3 - Other Consents and Licences - Rev. 3</u>
REP6-007	<u>Capture Power Ltd - 8.1 - SoCG between Capture Power Ltd. and NYCC and Selby DC - Rev. 7</u>
REP6-008	<u>Capture Power Ltd - 9.8 - Applicant's Comments on the Responses to the ExA's Second Written Questions</u>
REP6-009	<u>Capture Power Ltd - Report on Archaeological Evaluation</u>
REP6-010	<u>Capture Power Ltd - Letter from Natural England confirming 'no impediment' to the issue of a Badger Licence</u>
Deadline VII – 23 September 2015	
REP7-001	<u>Capture Power Ltd - Covering email for Deadline VII Submission</u>
REP7-002	<u>Capture Power Ltd - 1.3 – Application and Examination Documents Index – Rev. 9</u>
REP7-003	<u>Capture Power Ltd - 2.1 - Draft Development Consent Order (DCO) - Rev 5</u>
REP7-004	<u>Capture Power Ltd - Comparison version of Draft DCO showing changes from the Acceptance version to Revision 5, dated 23 September 2015</u>
REP7-005	<u>Capture Power Ltd - 3.6 - Compulsory Acquisition Status Update - Affected Parties - Rev. 2</u>
REP7-006	<u>Capture Power Ltd - 5.3 - Other Consents and Licences - Rev. 4</u>
REP7-007	<u>Capture Power Ltd - 6.5 - Environmental Statement (ES) Mitigation Annex - Rev. 3</u>
REP7-008	<u>Capture Power Ltd - 8.1 - Statement of Common Ground between Capture Power Ltd. and North Yorkshire County Council and Selby District Council - Rev. 8</u>
REP7-009	<u>Capture Power Ltd - 9.9 - Applicant's Response to the Examining Authority's Request for Further Information - Rev. 1</u>
REP7-010	<u>Capture Power Ltd - 9.10 - Summary of Noise Mitigation Measures - Rev. 1</u>
REP7-011	<u>Capture Power Ltd - Executed S.106 Deed of Development Consent Obligations</u>
REP7-012	<u>Environment Agency - Deadline VII submission</u>
REP7-013	<u>Natural England - Deadline VII submission</u>
REP7-014	<u>North Yorkshire County Council - Deadline VII submission</u>
REP7-015	<u>GTC - Deadline VII submission on behalf of Utility Grid Installations, Independent Pipelines, GTC Electric Network Company, Quadrant Pipelines and Independent Power Networks</u>
REP7-016	<u>Selby District Council - Response to Examining Authority's Request for further information in the Rule 17 letter dated 7 September 2015. Submitted for the deadline of 23 September 2015. LATE SUBMISSION</u>

Deadline VIII – 7 October 2015	
REP8-001	<u>Capture Power Limited - Covering email for Deadline VIII Submission</u>
REP8-002	<u>Capture Power Limited - 1.3 - Application and Examination Documents Index - Rev. 10</u>
REP8-003	<u>Capture Power Limited - 8.1 - Statement of Common Ground between Capture Power Ltd. and North Yorkshire County Council and Selby District Council - Rev. 9</u>
REP8-004	<u>Capture Power Limited - 9.11 - Applicant's Response to the Examining Authority's Second Request for Further Information & Comments on Deadline 7 Submissions - Rev. 1</u>
REP8-005	<u>Selby District Council - Response to Examining Authority's Request for further information in the Rule 17 letter dated 30 September 2015</u>
REP8-006	<u>Submission from the GTC Engineering group of companies</u>
REP8-007	<u>Submission from Gamma Telecoms Ltd</u>
Deadline IX – 13 October 2015	
REP9-001	<u>Capture Power Limited - Covering email for Deadline IX Submission</u>
REP9-002	<u>Capture Power Limited - 1.3 - Application and Examination Documents Index – Rev. 11</u>
REP9-003	<u>Capture Power Limited - 8.1 - Statement of Common Ground between Capture Power Ltd. and North Yorkshire County Council and Selby District Council - Rev. 9 (signed version)</u>
REP9-004	<u>Capture Power Limited - 9.12 - Applicant's Comments on Additional Submissions by Interested Parties- Rev. 1</u>
REP9-005	<u>Selby District Council – Deadline IX Submission. LATE SUBMISSION</u>
Other Documents	
OD-001	<u>Regulation 24 Transboundary Screening document</u>
OD-002	<u>Sections 56 & 59 and EIA Regulation 13 Certificate</u>
OD-003	<u>Capture Power Limited - Notice of Hearings</u>
OD-004	<u>Report on the Implications for European Sites (RIES)</u>

APPENDIX C: EVENTS IN THE EXAMINATION

EVENTS IN THE EXAMINATION

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

Date	Examination Event
22 April 2015	Examination begins
29 April 2015	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> • Examination Timetable • Examining Authority's (ExA) First Written Questions
20 May 2015	<p>Deadline I</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on relevant representations (RRs) • Summaries of all RR's exceeding 1500 words • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1500 words • Local Impact Report (LIR) from any local authorities • Statements of Common Ground (SoCG) requested by ExA – see Annex G of Rule 8 letter • Responses to ExA's first written questions • Comments on any additional submissions (non-material change of application documents dated 13 April 2015 by applicant) • Comments on, and suggested changes to, the draft Development Consent Order (dDCO) <p>Notifications:</p> <ul style="list-style-type: none"> • Notification by Statutory Parties to inform the ExA of a wish to be considered an interested party • Notification of wish to speak at a compulsory acquisition hearing • Notification of wish to speak at the issue specific hearing on the dDCO • Notification of wish to speak at issue specific hearing on environmental issues • Notification of wish to speak at an open floor hearing • Notification of wish to attend accompanied site inspection
3 June 2015	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> • Confirmation by the ExA of date, time and place for an ASI • Confirmation by ExA of date, time and place for an

	<p>issue specific hearing</p> <ul style="list-style-type: none"> • Confirmation by ExA of date, time and place for compulsory acquisition hearing • Confirmation by ExA of date, time and place for an open floor hearing, if required
10 June 2015	<p>Deadline II</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on LIRs • Comments on responses to ExA's first written questions • Comments on SoCGs • Revised draft DCO from applicant • Applicant's response to comments received by Deadline I on non-material change to application documents, dated 13 April 2015
19 June 2015	<p>Deadline III</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Report compiled from responses to the Applicant's notification of the non-material amendments to the DCO application and updates to the application documents dated 13 April 2015
1 July 2015	<p>Issue Specific Hearing</p> <ul style="list-style-type: none"> • Environmental Issues
1 July 2015	Open Floor Hearing
2 July 2015	Compulsory Acquisition Hearing
2 July 2015	<p>Issue Specific Hearing</p> <ul style="list-style-type: none"> • Draft Development Consent Order (dDCO)
3 July 2015	Accompanied Site Inspection
8 July 2015	<p>Deadline IV</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Post-Hearing documents including any written summary of an oral case put at any hearing • Comments on any further information received by the ExA for Deadline II
22 July 2015	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Rule 8(3) notification letter and second written questions • Confirmation by the ExA of decision not to hold further hearings or ASI on the reserve dates 1-3 September 2015

5 August 2015	<p>Deadline V</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses to ExA's second written questions • Applicants revised draft DCO taking account of issues raised and comments to date
21 August 2015	<p>Deadline VI</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on applicant's revised draft DCO • Comments on responses to ExA's second written questions
7 September 2015*	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • ExA's revised dDCO taking issues raised and comments into account • ExA's Report on the Implications for European Sites (RIES) for consultation • Rule 17 request for further information
23 September 2015*	<p>Deadline VII</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Any updated SoCGs, • Any written comments on the ExA's revised dDCO • Any written comments on the ExA's RIES • Response to further information requested by the ExA for this deadline
30 September 2015*	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Rule 17 and Rule 8(3) notification letter
7 October 2015*	<p>Deadline VIII</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Responses on the additional submission (Project and Funding Update), received by the applicant • Comments on any further information received by the ExA for Deadline VII • Any further requests for information
13 October 2015*	<p>Deadline IX</p> <p>Receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on responses to the additional submission (Project and Funding Update) received by the applicant • Comments on any information and/responses received by the ExA for Deadline VIII • Any further requests for information
15 October 2015*	Close of the Examination

* Variation of Examination Timetable, consequently made by the Examining Authority to her original Examination Timetable issued on 29 April 2015

APPENDIX D: LIST OF ABBREVIATIONS

LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
A	Article
AIL	Abnormal Indivisible Loads
APFP	Applications: Prescribed Forms and Procedures
ASI	Accompanied Site Inspection
BoR	Book of Reference
C&RT	Canal and Rivers Trust
CA	Compulsory Acquisition
CCR	Carbon Capture Readiness
CCS	Carbon Capture Storage
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CO ₂	Carbon dioxide
CPL	Capture Power Limited
DAS	Design and Access Statement
DCLG	Department for Communities and Local Government
dDCO	draft Development Consent Order
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DPL	Drax Power Ltd
EA	Environment Agency
EC	European Commission
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EPR	Examination Procedure Rules
EPS	Emissions Performance Standard
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FDO	Footpath Division Order
FRA	Flood Risk Assessment
FWQ	First Written Questions
GI	Green Infrastructure
ha	Hectare
HE	Historic England
HGV	Heavy Goods Vehicle
HRA	Habitat Regulations Assessment
IDB	Internal Drainage Board
IED	Industrial Emissions Directive
IP	Interested Party
IPPC	Integrated Pollution Prevention and Control
ISH	Issue Specific Hearing
kV	Kilovolt
LIR	Local Impact Report

Abbreviation or usage	Reference
LVIA	Landscape and Visual Impact Assessment
MMO	Marine Management Organisation
MW	Megawatt
MWe	Megawatt Electricity
NE	Natural England
NFU	National Farmers' Union
NGET	National Grid Electricity Transmission plc
NGCL	National Grid Carbon Limited
NGG	National Grid Gas
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptor
NYCC	North Yorkshire County Council
OFGEM	Office of Gas and Electricity Markets
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PM	Preliminary Meeting
PRoW	Public Right of Way
R	Requirement
Ramsar	The Ramsar Convention on Wetlands
RIES	Report on the Implications for European Sites
s	Section
SAC	Special Area of Conservation
SDC	Selby District Council
SDCS	Selby District Core Strategy
SDLP	Selby District Local Plan
SM	Scheduled Monument
SO ₂	Sulphur dioxide
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest
SWQ	Second Written Questions
WR	Written Representations
WRCCS	White Rose Carbon Capture and Storage
YWT	Yorkshire Wildlife Trust