

The Eggborough CCGT Project

Document Ref: 2.2
PINS Ref: EN010081

The Eggborough CCGT (Generating Station) Order

Land at and in the vicinity of the Eggborough Power Station site,
near Selby, North Yorkshire DN14 0BS

Explanatory Memorandum

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009

Regulation 5(2)(c)



Applicant: Eggborough Power Limited
Date: May 2017

DOCUMENT HISTORY

Document Ref	2.2		
Revision	1.0		
Author	Emma Cottam (EC)		
Signed	EC	Date	30.05.17
Approved By	Nick McDonald (NM)		
Signed	NM	Date	30.05.17
Document Owner	Pinsent Masons LLP (PM)		

GLOSSARY

Abbreviation	Description
2008 Act	The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.
ARoW Plan(s)	Access and rights of way plans.
AGI	Above ground installation.
APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Sets out detailed procedures that must be followed for submitting and publicising applications for Nationally Significant Infrastructure Projects.
Applicant	Eggborough Power Limited or EPL.
Application	The Application for a Development Consent Order made to the Secretary of State under Section 37 of the Planning Act 2008 in respect of the Project, required pursuant to Section 31 of the Planning Act 2008 because the Project is a Nationally Significant Infrastructure Project under Section 14(1)(a) and Section 15 of the Planning Act 2008 by virtue of being an onshore generating station in England or Wales of 50 Megawatts electrical capacity of more.
Associated Development	Defined under S.115(2) of The Planning Act 2008 as development which is associated with the principal development and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development, or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
Book of Reference	A reference document providing details of all land ownership interests within the Order Limits and linked to the Land Plans.
CCGT	Combined cycle gas turbine.
DCO	A Development Consent Order made by the relevant Secretary of State pursuant to the Planning Act 2008 to authorise a NSIP. A DCO does or can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.
EIA	Environmental Impact Assessment. The assessment of the likely significant environmental effects of a development undertaken in accordance with the

Abbreviation	Description
	EIA Regulations.
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 setting out how the EIA of Nationally Significant Infrastructure Projects must be carried out and the procedures that must be followed.
ES	The Environmental Statement documenting the findings of the EIA.
Explanatory Memorandum	This document – it explains the intended purpose and effect of a DCO and the authorisations and powers that it seeks.
ha	Hectares. A metric measurement of area.
Land Plan(s)	A plan showing all of the land that is required for the Project and / or over which rights are to be sought as part of the DCO.
Limits of deviation	The lateral limits shown on the Works Plan(s) submitted as part of the Application and within which the Project may occur.
MMO	The Marine Management Organisation.
NSIP	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under 2008 Act.
NTS	National transmission system
NYCC	North Yorkshire County Council.
Order	The Eggborough CCGT (Generating Station) Order, being the DCO that would be made by the Secretary of State authorising the Project, a draft of which has been submitted as part of the Application.
Order limits	The limits of the land to which the Application for the DCO relates and shown on the Land Plans and Works Plans within which the Project must be carried out and which is required for its construction and operation.
PINS	The Planning Inspectorate. A Government agency responsible for receiving and administering the acceptance and examination of applications for NSIPs on behalf of the Secretary of State.
Project or Proposed Development	The development to which the Application relates and which requires a DCO, and as listed at Schedule 1 to the Order.
Requirements	The ‘requirements’ at Schedule 2 to the draft Order that, amongst other matters, are intended to control the final details of the Project as to be constructed and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts.
Site	The land corresponding to the Order Limits and encompassing the Order Land and which is required for the construction and operation of the Project.
SDC	Selby District Council.
SoS	The Secretary of State. The decision maker for DCO applications and head of Government department. In this case the SoS for the Department for Business, Energy and Industrial Strategy
Statement of Reasons	A statement setting out the reasons and justification for the compulsory acquisition of land or rights in land within the Order Limits.
Works Plans	Plans showing the numbered works referred to at Schedule 1 to the Order and submitted with the Application.

CONTENTS

1.0 INTRODUCTION	1
Overview	1
EPL.....	1
The Proposed Development Site	1
The Proposed Development	2
2.0 THE PURPOSE AND STRUCTURE OF THIS DOCUMENT	5
3.0 PURPOSE OF THE ORDER.....	7
4.0 PROVISIONS OF THE ORDER	9
Part 1 (Preliminary) and Part 2 (Principal Powers)	9
Part 3 (Streets)	11
Part 4 (Supplemental Powers)	12
Part 5 (Powers of Acquisition)	13
Part 6 (Operations)	16
Part 7 (Miscellaneous and General).....	16
5.0 SCHEDULES	18
Work No. 1	18
Schedules 2 - 11	20

1.0 INTRODUCTION

Overview

- 1.1 This Explanatory Memorandum has been prepared on behalf of Eggborough Power Limited ('EPL' or the 'Applicant'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under section 37 of 'The Planning Act 2008' (the '2008 Act').
- 1.2 EPL is seeking development consent for the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 2,500 megawatts ('MW'), including electrical and water connections, a new gas supply pipeline and other associated development (the 'Project' or 'Proposed Development') on land at and in the vicinity of the existing Eggborough coal-fired power station, near Selby, North Yorkshire.
- 1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under sections 14 and 15(2) of the 2008 Act.
- 1.4 The DCO, if made by the SoS, would be known as the 'Eggborough CCGT (Generating Station) Order' (the 'Order').

EPL

- 1.5 EPL owns and operates the existing Eggborough coal-fired power station (the 'existing coal-fired power station'), near Selby, including a significant proportion of the land required for the Proposed Development.
- 1.6 EPL was acquired by EP UK Investments Ltd (EP UK) in late 2014; a subsidiary of Energetický A Průmyslový Holding ('EPH'). EPH owns and operates energy generation assets in the Czech Republic, Slovak Republic, Germany, Italy, Hungary, Poland and the United Kingdom.

The Proposed Development Site

- 1.7 The Proposed Development Site (the 'Site' or the 'Order limits') is located at and in the vicinity of the existing coal-fired power station approximately 8 kilometres south of Selby.
- 1.8 The existing coal-fired power station is bound to the north by Wand Lane, with the River Aire located approximately 650 metres ('m') further to the north and the A19 Selby Road immediately to the west. Eggborough Village is located approximately 750 m to the south-west.
- 1.9 The entire Site lies within the administrative boundaries of Selby District Council ('SDC') and North Yorkshire County Council ('NYCC').
- 1.10 The existing coal-fired power station was officially opened in 1970 and comprises four coal-fired boilers units, which together are capable of generating up to 2,000 MW of electricity. The existing coal-fired power station also includes a turbine hall and boiler house, an emissions stack (chimney) of approximately 198 m in height, eight concrete cooling towers of approximately 115 m in height, an administration and control block, a coal stockyard and a dedicated rail line for the delivery of coal, in addition to ancillary buildings, structures and infrastructure and utility connections.

- 1.11 The Site itself extends to approximately 102 ha and comprises land within the operational area of the existing coal-fired power station for the new gas-fired generating station and electrical and groundwater supply connections; corridors of land to the north of the existing coal-fired power station for the cooling water connections and gas supply pipeline; an area of land to the south-east of the main coal stockyard for surface water discharge connections; and corridors of land to the west and south of the operational area of the existing coal-fired power station for ground and towns water supply connections.
- 1.12 The land required for the generating station and electrical and groundwater connections is owned by EPL, as well as the majority of the land for the cooling and towns water and surface water discharge connections. The majority of the land required for the gas supply pipeline is not owned by EPL.
- 1.13 The area surrounding the Site is predominantly flat and for the most part comprises agricultural land interspersed with small settlements and farmsteads. The area is however crossed by transport infrastructure, notably the A19 and railway lines, including the East Coast Mainline, in addition to overhead electricity lines associated with the existing coal-fired power station and other power stations within the wider area.
- 1.14 A more detailed description of the Site is provided at Chapter 3 'Description of the Site' of the Environmental Statement ('ES') Volume I (Application Document Ref. 6.2).

The Proposed Development

- 1.15 The main components of the Proposed Development are summarised below:
- The **'Proposed Power Plant'** (Work No. 1) - an electricity generating station with a gross output capacity of up to 2,500 MW located on the main coal stockyard area of the existing coal-fired power station, comprising:
 - Work No. 1A - a combined cycle gas turbine ('CCGT') plant, comprising up to three CCGT units, including turbine hall and heat recovery steam generator buildings, emissions stacks and administration/control buildings;
 - Work No. 1B - a peaking plant and black start plant fuelled by natural gas with a combined gross output capacity of up to 299 MW, comprising a peaking plant consisting of up to two open cycle gas turbine units or up to ten reciprocating engines and a black start plant consisting of one open cycle gas turbine unit or up to three reciprocating gas engines, including turbine buildings, diesel generators and storage tanks for black start start-up prior to gas-firing and emissions stacks;
 - Work No. 1C - combined cycle gas turbine plant cooling infrastructure, comprising up to three banks of cooling towers, cooling water pump house buildings and cooling water dosing plant buildings; and
 - ancillary buildings, enclosures, plant, equipment and infrastructure connections and works.
 - The **'Proposed Construction Laydown Area'** (Work No. 2A) - an area for temporary construction and laydown during the construction phase, including contractor compounds and facilities, requiring the infilling of the existing coal-fired power station back-up cooling water lagoon.

- The '**Proposed Carbon Capture Readiness ('CCR') Land**' (Work No. 2B) - an area of land to be reserved for carbon capture plant should such technology become viable in the future. It is proposed that this 'reserve' land is provided on part of the area to be used for temporary construction and laydown.
- The '**Proposed Electricity Connection**' (Work No. 3) - electrical connection works, comprising:
 - Work No. 3A - up to 400 kilovolt ('kV') underground electrical cables to and from the existing National Grid ('NG') 400 kV substation;
 - Work No. 3B - works within the NG substation, including underground and over electrical cables, connection to busbars and upgraded or replacement equipment.
- The '**Proposed Cooling Water Connections**' (Work No. 4) - cooling water connection works, comprising works to the existing cooling water supply and discharge pipelines and intake and outfall structures within the River Aire, including, as necessary, upgraded or replacement pipelines, buildings, enclosures and structures, and underground electrical supply cables, transformers and control systems cables.
- The '**Proposed Borehole and Towns Mains Water Connections**' (Work No. 5) - ground and towns water supply connection works, comprising works to the existing groundwater boreholes and pipelines, existing towns water pipelines, replacement and new pipelines, plant, buildings, enclosures and structures, and underground electrical supply cables, transformers and control systems cables.
- The '**Proposed Gas Connection**' (Work No. 6) - gas supply pipeline connection works for the transport of natural gas to Work No. 1, comprising an underground high pressure steel pipeline of up to 1,000 millimetres (nominal bore) in diameter and approximately 4.6 kilometres in length, including cathodic protection posts, marker posts and underground electrical supply cables, transformers and control systems cables, running from Work No. 1 under the River Aire to a connection point with the National Transmission System ('NTS') for gas No. 29 Feeder pipeline west of Burn Village.
- The '**Proposed AGI**' (Work No. 7) - an Above Ground Installation ('AGI') west of Burn Village, connecting the gas supply pipeline (Work No. 6) to the NTS No. 29 Feeder pipeline, comprising:
 - Work No. 7A - a compound for National Grid's apparatus; and
 - Work No. 7B - a compound for EPL's apparatus.
- The '**Proposed Retained Landscaping**' (Work No. 8) - encompassing the existing mature tree and shrub planting along the northern and eastern sides of Wand Lane and to the eastern boundary of the existing coal-fired power station site, including that on the embankment around the eastern, southern and western boundaries of the main coal stockyard.
- The '**Proposed Surface Water Discharge Connection**' (Work No. 9) - surface water drainage connection works to Hensall Dyke to the south-east of the main coal stockyard, comprising works to install or upgrade drainage pipes and works to Hensall Dyke.
- The '**Proposed Rail Works**' (Work No. 10) - rail infrastructure and access works, comprising alterations to or replacement of the existing private rail line serving the existing coal-fired power station site, including new rail lines, installation of replacement crossover points and ancillary equipment and vehicular and pedestrian access and facilities.

- 1.16 The 'Associated Development', for the purposes of section 115 of the 2008 Act comprises Work Nos. 2 to 10 of the Proposed Development.
- 1.17 It is anticipated that subject to the DCO having been made by the SoS (and a final investment decision by EPL), construction work on the Proposed Development would commence in early 2019. The overall construction programme is expected to last approximately three years, although the duration of the electrical and water connection and gas supply pipeline connection works would be significantly less. The construction phase is therefore anticipated to be completed in 2022 with the Proposed Development entering commercial operation later that year.
- 1.18 A more detailed description of the Proposed Development is provided at Schedule 1 'Authorised Development' of the draft DCO and Chapter 4 'The Proposed Development' of the ES Volume I (Application Document Ref. 6.2) and the areas within which each of the main components of the Proposed Development are to be built is shown by the coloured and hatched areas on the Works Plans (Application Document Ref. 4.4).

2.0 THE PURPOSE AND STRUCTURE OF THIS DOCUMENT

- 2.1 This Explanatory Memorandum is prepared to explain the purpose and effect of each article of, and the Schedules to, the draft Eggborough CCGT (Generating Station) Order ('the Order'), as required by Regulation 5(2)(c) of the APFP Regulations.
- 2.2 It also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ('the model provisions'). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the Applicant considers it is still relevant to note and explain variations made in the Order compared to the model provisions.
- 2.3 The Order includes a number of provisions to enable the construction, maintenance and operation of the Proposed Development. These are briefly described below and then considered in more detail in the following sections:-
- Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order;
 - Part 2: Articles 3 to 5 provide development consent for the Proposed Development, and allow it to be constructed, maintained and operated. Articles 6 and 7 set out who has the benefit of the powers of the Order and how those powers can be transferred;
 - Part 3: Articles 8 to 13 provide for the undertaker to be able to carry out works to and within streets, to create or improve accesses, to temporarily stop up streets, suspend public rights of navigation and to be able to divert and temporarily stop up public rights of way;
 - Part 4: Articles 14 to 16 set out three supplemental powers relating to discharge of water, authority to survey land and removal of human remains;
 - Part 5: Articles 17 to 30 provide for the undertaker to be able to compulsorily acquire the Order land and rights over/within it, and to be able to temporarily use parts of the Order land for the construction or maintenance of the Proposed Development. The provisions provide for compensation to be payable to affected persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to equipment of statutory undertakers;
 - Part 6: Articles 31 and 32 provide (respectively) powers in relation to trees which need to be removed or lopped in relation to the Proposed Development and any protective works to buildings;
 - Part 7: Articles 33 to 42 include various general provisions in relation to the Order:-
 - Article 33 provides protection for statutory undertakers through the protective provisions (set out in Schedule 12);
 - Article 34 provides that a deemed marine licence, as included at Schedule 13, is issued as part of the Order;
 - Articles 35 to 42 includes provisions such as application of statutes relating to leases, that the Order land will be 'operational land', a defence to proceedings in respect of statutory nuisance, procedures for approvals required under the Order, certification of documents relevant to the Order, arbitration in case of disagreements under the Order, notices served under the Order, and a provision in respect of Crown land.

- 2.4 Schedules: there are 14 Schedules to the Order, providing for the description of the Proposed Development (Schedule 1), the requirements (a form of control akin to planning conditions) applying to it (Schedule 2), matters in relation to streets, rights of way and public rights of navigation (Schedules 3 to 7), land in which only rights may be acquired (Schedule 8), amendments to statutes to ensure appropriate compensation is payable where new rights over land are acquired under the Order (Schedule 9), land which may be used temporarily for the Proposed Development (Schedule 10), the procedure for discharging requirements (Schedule 11) provisions protecting statutory undertakers and their apparatus (Schedule 12), a deemed marine licence (Schedule 13) and relevant parameters for multi or single shaft options (Schedule 14).

3.0 PURPOSE OF THE ORDER

- 3.1 As the Proposed Development is an onshore generating station with a capacity of over 50 MW, in England, it is a 'nationally significant infrastructure project' ('NSIP') under sections 14(1)(a) and 15 of the 2008 Act. The Applicant therefore requires development consent under the 2008 Act in order to construct and operate the Proposed Development. Development consent may only be granted by order, following an application to the Secretary of State (section 37 of the 2008 Act).
- 3.2 The Applicant is therefore making the Application to the SoS for a development consent order for the construction and operation of the Eggborough CCGT Generating Station in the District of Selby ('the Project' or 'Proposed Development', and referred to in the Order as 'the authorised development').
- 3.3 The Order refers to the person authorised to exercise the powers in the Order as 'the undertaker', and defines the undertaker as Eggborough Power Limited.
- 3.4 In addition to providing for the construction and operation of the authorised development, the Order will, in accordance with section 122 and section 120(3) / Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land. The Book of Reference (Application Document Ref. 3.1) sets out a description of the land and interests included in the Order, and this is shown on the Land Plans (Application Document Ref. 4.2). The Order provides for the areas which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (Application Document Ref. 3.2) which accompanies the Application and sets out the justification for the acquisition or interference with the Order land.
- 3.5 The matters for which development consent is sought are summarised in paragraph 4.4 below and described more formally in Schedule 1 to the Order.
- 3.6 Section 115(1) of the 2008 Act provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The Secretary of State must therefore be satisfied that all the elements included within the 'authorised development' are either part of the NSIP or are associated development, in order to include them under in the Order pursuant to section 115 of the 2008 Act.
- 3.7 The generating station and related development within Work Nos. 1A, 1B and 1C constitute "development for which development consent is required" (as a NSIP, as set out above), and the Order also includes other development which is Associated Development (i.e. not an integral part of the NSIP itself) which are included at Work Nos. 2 to 10 (inclusive). EPL has considered Work Nos. 2 to 10 against the policy and criteria in DCLG 'Guidance on associated development applications for major infrastructure projects' (April 2013) - it is clear that all of these Work Nos. come within the guidance and are clearly capable of being granted development consent by the Secretary of State pursuant to section 115.
- 3.8 In particular, Work Nos. 2 to 10 are all:
- directly associated with the NSIP, as they are all required for the construction, maintenance or operation of the generating station, or to mitigate its impacts (paragraph 5(i) of the Guidance);

- subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));
- proportionate to the nature and scale of the NSIP (paragraph 5(iv)); and
- of a nature which is typically brought forward alongside a gas-fired generating station (paragraph 6);
- listed in or analagous to the types of associated development listed in Annexes A and B to the Guidance. Those annexes mention (of relevance to Work Nos. 2 to 10):
 - "Formation of new or improved... access" and "Railway works and associated works" (Work No. 10);
 - "Highway and rail route / junction improvements" (highways access points in various Work Nos.);
 - "Temporary haul roads... and lay down areas" (relevant to Work Nos. 2A, 3, 4, 5 6, 7 and 9);
 - "Electricity networks", "Water/wastewater networks", "Fuel and pipe-line networks" and "Telecommunications networks" (Work Nos 3, 4, 5, 6, 7 and 9);
 - "Development undertaken for the purpose of addressing impacts" and "Hard and soft landscaping" (Work No. 8 specifically, and relevant elements of all Work Nos.);
 - "Working sites, site offices and laydown areas" (Work No. 2A specifically and relevant elements of all Work Nos.); and
 - "Overhead / underground lines", "Substations", "Gas pipelines and pressure reduction stations" (Work Nos. 3, 6 and 7).

3.9 A more detailed description of the various elements of the Proposed Development is provided in Chapter 4 of the ES (Volume 1, Application Document Ref. 6.2).

4.0 PROVISIONS OF THE ORDER

4.1 The Order consists of 42 operative provisions, each referred to as articles, and 14 Schedules. The articles are considered below in numerical order (split between the 'Parts' of the Order), and Schedules are considered along with the article which introduces them or to which they relate.

Part 1 (Preliminary) and Part 2 (Principal Powers)

4.2 Articles 1 (*Citation and commencement*) and 2 (*Interpretation*) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

4.3 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate some Schedules also contain provisions setting out what terms mean in the relevant Schedule. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions, including:-

- Definitions of documents submitted as part of the Application and which are referred to in the Order (such as the ES, the design and access statement, the combined heat and power assessment and various plans) have been added;
- The definition of "apparatus" has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include electricity cables and telecommunications equipment, and to include aerial markers, cathodic protection test posts and field boundary markers, pipelines, transformer rectification kiosks and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which EPL needs to carry out. Similar wording has precedent in the Yorkshire and Humber (Carbon Capture and Storage Cross Country Pipeline) Order. Whilst this application was refused development consent by the Secretary of State (in relation to grounds of the need and case for the proposed development) this approach was considered acceptable by the Examining Authority in its report of recommendation (ask per the recommended form of draft Development Consent Order, at Appendix A of that report).
- A definition of "limits of deviation" has been added and will operate by reference to the Works Plans. These are the areas within which the authorised development can be constructed, see further below in relation to article 3;
- A definition of "maintain" has been added to make clear what is authorised under article 4 (see below), and in particular that it does not permit the undertaker to depart from the description of the authorised development in Schedule 1 nor to carry out maintenance operations which would cause different environmental effects to those identified in the ES (Application Document Ref. 6.2);
- The definition of "street works" has been amended to refer to the works listed in the street works article (article 8(1)) so as to ensure consistency between the powers in the article and the definition itself;
- The "undertaker" is defined as Eggborough Power Limited, who has the benefit of the provisions of the Order, subject to the provisions of articles 6 and 7 (see below).
- Sub-paragraph (2) has been included to reflect that "rights over land" (including new rights which are created or acquired) include any trusts, incidents, including restrictive covenants.

- Sub-paragraph (3) provides that apart from the definition of "the undertaker", the definitions in paragraph (1) do not apply to Schedule 13 (deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009). This is because Schedule 13 has its own set of definitions and significant cross-references to the draft Order would then be unduly complex. Moreover, if the licence is varied by the MMO under section 72 (variation, suspension, revocation and transfer) of the Marine and Coastal Access Act 2009, the draft Order will become increasingly remote, making cross-reference to it more burdensome. This approach has precedent in the Yorkshire and Humber (Carbon Capture and Storage Cross Country Pipeline) Order.
 - Sub-paragraphs (4) to (7) of article 2 have been added to provide clarity in relation to (respectively) that all distances, directions and lengths are approximate (including areas described in the Book of Reference); references to points on plans; references to numbered works are to the works as described in Schedule 1 and shown on the works plans; and how the word "includes" is to be construed.
- 4.4 Article 3 (*Development consent etc granted by the Order*) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (Application Document Ref. 4.4) to delineate the area within which each 'work' can be constructed, maintained and operated (see article 3(2)). The areas within which each work can be constructed are therefore shown on the Works Plans. The works set out in Schedule 1 are listed in more detail at paragraph 1.15 of this document.
- 4.5 Sub-paragraph (2) requires that the works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans (Application Document Ref. 4.4). This is in order to provide certainty as to what has been consented by the Order, in respect of which land areas. Article 3, Schedules 1, 2 and 14 operate together to provide the parameters which the undertaker must construct (etc.) the generating station. This is explained in greater detail in the section describing Schedule 1 beginning at paragraph 5.1 of this document.
- 4.6 Article 4 (*Maintenance of authorised development*) provides for the maintenance of the authorised development. Article 4 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order and the requirements (see below), and that it may only take place within the Order limits.
- 4.7 Article 5 (*Operation of authorised development*) permits the operation and use of the generating station comprised in the authorised development and is included under s.140 of the 2008 Act. Article 5(2) specifically preserves the need for EPL to obtain any other operational consent that may be needed for the generating station, in addition to the Order.
- 4.8 Article 6(1) (*Benefit of Order*) overrides Section 156(1) of the 2008 Act (which is permitted by Section 156(2)) and provides that the benefit of the Order is for the undertaker, rather than anyone with an interest in the land. Given the nature of the authorised development and the fact that powers of compulsory acquisition are sought it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision. The undertaker is defined in article 2 as Eggborough Power Limited, as promoter of the authorised development, and anyone to whom the benefit of the Order is transferred under articles 6 or 7.

Overriding section 156(1) is common in DCOs that have been made, including the Hinkley Point C (Nuclear Generating Station) Order 2013, North Killingholme (Generating Station) Order 2013 and Thorpe Marsh Gas Pipeline Order 2016. Article 6(2) provides, without prejudice to Article 6(1), that for numbered works 3B and 7A the benefit of the Order is for the undertaker and National Grid (as National Grid may be best placed to carry out all or part of those works). This approach has precedent in orders such as the Progress Power (Gas Fired Power Station) Order 2015.

- 4.9 Article 7 (*Consent to transfer benefit of the Order*) makes provision for the transfer of the benefit of the Order. The consent of the Secretary of State is needed before the undertaker can transfer or lease except where the transferee or lessee is: (i) the holder of an electricity generating licence; (ii) a highway authority responsible for the highways within the Order limits; or (iii) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.
- 4.10 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to Eggborough Power Limited so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory purchase claims. The carve out in subparagraph (4) in respect of the holder of a generation licence has precedent in orders such as the Progress Power (Gas Fired Power Station) Order 2015.

Part 3 (Streets)

- 4.11 Articles 8 (*Street works*) and 9 (*Power to alter layout, etc., of streets*) allow the undertaker to alter the layout of a street in order to construct the new accesses authorised under article 12 or to carry out street works in accordance with the statutory rights under the New Roads and Street Works Act 1991. Schedule 3 sets out the streets that are subject to street works, and the nature of those works. Schedule 4 sets out the alterations to streets to allow for the creation of new accesses (either temporary or permanent). For clarity, article 9 has been included to provide for the right to alter the layout of a street. Article 9 is a model provision intended to permit the carrying out of street works for the purposes of the authorised development.
- 4.12 Article 10 (*Construction and maintenance of new or altered means of access*) provides that new or altered means of access are to be constructed to a particular standard and maintained at the expense of the undertaker for a year. Any part of the new or altered means of access which are proposed to be public highway (as set out on the ARoW Plan(s) (Application Document Ref. 4.5) and described in Part 1 of Schedule 5) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private roads or accesses which the undertaker is altering or creating and as also set out in the ARoW Plan(s) and Part 2 of Schedule 5) will then be maintained by the street authority. Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. This article (and the incorporation of the defences in particular) is similar to article 19 in the Hinkley Point C (Nuclear Generating Station) Order 2013.
- 4.13 Article 11 (*Temporary stopping up of streets, public rights of way and public rights of navigation*) provides for the temporary stopping up of streets, public rights of navigation and public rights of way for the purposes of carrying out the authorised development. This article largely follows the

approach set out in the model provisions, save for the inclusion of the right for the undertaker to temporarily suspend the public rights of navigation (as listed in Part 2 of Schedule 7).

- 4.14 In respect of the streets and public rights of way, the article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets and public rights of way (respectively set out in Schedule 6 and Part 1 of Schedule 7 to the Order). There are consultation requirements before this power can be exercised and compensation is provided for in respect of the loss or suspension of any private rights of way. Article 11(6) confers a power on the undertaker, where the use of a street has been temporarily stopped up under the power in article 11, to use such a street as a temporary working site. The approach in sub-paragraphs 7 to 11 of the Order, in respect of the suspension of public rights of navigation, mirrors insofar as is relevant to this Order, the drafting in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and requires that prior to the undertaker suspending any public rights of navigation it must give notice to the Canal and River Trust, who in turn must then give notice to of the commencement date of any suspension to mariners.
- 4.15 Article 12 (*Access to works*) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Parts 1 and 2 of Schedule 4. For clarity, temporary and permanent means of access are dealt with separately. Other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority, in consultation with the highway authority.
- 4.16 Article 13 (*Agreements with street authorities*) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street, and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets. Such a provision was included in the National Grid (King's Lynn B Power Station Connection) Order 2013 and the Progress Power (Gas Fired Power Station) Order 2015.

Part 4 (Supplemental Powers)

- 4.17 Article 14 (*Discharge of water*) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. The reference from the model provisions to s.85 of the Water Resources Act 1991 has been deleted as this section has now been repealed - this has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 4.18 Article 15 (*Authority to survey and investigate the land*) is a model provision which allows the undertaker to survey and investigate land, including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.
- 4.19 Article 16 (*Removal of human remains*) is a model provision which provides for the removal of human remains from the Order land and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their

treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices.

Part 5 (Powers of Acquisition)

- 4.20 Article 17 (*Compulsory acquisition of land*) provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). Article 18 makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the authorised development. The article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in article 21 (private rights). This latter point follows other development consent orders as made such as the North Killingholme (Generating Station) Order 2014 and the Progress Power (Gas Fired Power Station) Order 2015.
- 4.21 Article 21(3) makes it clear that the powers in this article are subject to the powers and restrictions in articles 20 (compulsory acquisition of rights) and article 26 (temporary use of land for carrying out the authorised development)- this ensures that, where relevant, the undertaker can acquire only new rights or can only take temporary possession of land, and cannot acquire the freehold interest in that land. Article 21(3) also makes the article subject to article 42 (Crown rights), to ensure that the appropriate protections for the Crown are secured, as required by section 135 of the 2008 Act.
- 4.22 Article 18 (*Statutory authority to override easements and other rights*) provides, for the avoidance of doubt, that by virtue of section 158 of the 2008 Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Rookery South (Resource Recovery Facility) Order 2011. The reference to restrictions as to use of land arising in contracts was included in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.
- 4.23 Article 19 (*Time limit for exercise of authority to acquire land compulsorily*) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition.
- 4.24 Article 20 (*Compulsory acquisition of rights etc*) entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence, or to create new rights. The ability to acquire new rights ensures that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the authorised development is implemented. Such an approach was included in The M1 Junction 10a (Grade Separation) Development Consent Order 2013 and The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014. Sub-paragraph (7) of this article makes it clear that the powers in this article are subject to the restrictions in article 42 (Crown rights). This approach has precedent in other orders such as the Thorpe Marsh Gas Pipeline Order 2016.

- 4.25 The article introduces Schedule 8, which ensures that in respect of land listed there, the undertaker may only acquire the rights in land listed (and not freehold interest in the land). The land listed in Schedule 8 corresponds with the land shown coloured blue on the Land Plans (Application Document Ref. 4.2).
- 4.26 The article also introduces Schedule 9, which amends existing compensation legislation, to ensure that it applies appropriately to the powers granted to the undertaker under the Order. Such a provision is common in similar orders, including the Hinkley Point C (Nuclear Generating Station) Order 2013.
- 4.27 The article also provides for the transfer of the power to acquire new rights to a statutory undertaker with the consent of the Secretary of State. This is to allow for the creation of easements in favour of statutory undertakers in respect of their apparatus which would not otherwise be possible as the undertaker does not own the dominant tenement.
- 4.28 Article 21 (*Private rights*) is based on a model provision and has the effect of extinguishing private rights over land where: (1) land is subject to compulsory acquisition; (2) where the private right is inconsistent with a right being compulsory acquired; or (3) land is owned by the undertaker. The article also suspends private rights for as long as the undertaker is in temporary possession of land under the Order. The article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation or operation of the authorised development. The article follows the approach in the Rookery South (Resource Recovery Facility) Order 2011, the M1 Junction 10a (Grade Separation) Development Consent Order 2013) and the Progress Power (Gas Fired Power Station) Order 2015.
- 4.29 Article 22 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016.
- 4.30 Article 23 (*Acquisition of subsoil only*) permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision.
- 4.31 Article 24 (*Application of Part 1 of the Compulsory Purchase Act 1965*) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act.
- 4.32 This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 26 or 27 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017.

- 4.33 Article 25 (*Rights under or over streets*) is adapted from a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purpose of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the Progress Power (Gas Fired Power Station) Order 2015.
- 4.34 Article 26 (*Temporary use of land for carrying out the authorised development*) allows two categories of land to be temporarily used for the carrying out of the authorised development. The first is a permissive category, relating to any area within the Order limits, and the second is a limit, providing that the land specified in Schedule 10 may only be temporarily occupied (and therefore that no interest may be compulsorily acquired in it).
- 4.35 There is a limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily (shown coloured yellow on the Land Plans (Application Document Ref. 4.2)) is the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken. The article also requires the undertaker to give 14 days' notice and to restore the land following the temporary works. The powers in this article are not intended to be used so as to permit the undertaker to use the land for the construction laydown area (being that area shown as Work No. 2A), as EPL already owns the freehold interest in this land.
- 4.36 A similar provision is made in article 27 (*Temporary use of land for maintaining the authorised development*) for the temporary use of land for maintenance of the authorised development. There is again a limit on the length of time that the undertaker can use land in this way, provisions requiring the giving of 28 days' notice and restoration of the land following the temporary possession.
- 4.37 Both these articles provide for the payment of compensation for that temporary use of the land. They are both model provisions, but article 26 has been amended to allow the undertaker to temporarily access land for the carrying out of the authorised development in the situation where it has not yet taken permanent acquisition - this enables a more flexible approach to project implementation if required, and may enable the undertaker to allow an owner/occupier to continue their ownership/occupation for a longer period. This alteration to the model provision was included in the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
- 4.38 Article 28 (*Statutory undertakers*) provides for the acquisition of land belonging to statutory undertakers that is identified in the Book of Reference (Application Document Ref. 3.1). This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This article is subject to the protective provisions (see article 36 below) included at Schedule 12 of the Order.
- 4.39 Article 29 (*Apparatus and rights of statutory undertakers in stopped up streets*) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are temporarily altered or diverted or where use is temporarily prohibited or restricted under Articles 10 or 11, including provision as to the relocation of apparatus. It is a model provision amended to reflect the Order which does not authorise any permanent stopping-up. Paragraph (2) onwards has been

deleted to avoid any duplication with the protective provisions contained in Schedule 12 of the Order.

- 4.40 Article 30 (*Recovery of costs of new connections*) provides that persons who have to create a new connection following the exercise of powers under article 29 may recover the costs of new connections from the undertaker. It is a model provision, with the part of the model provision that referred to the permanent stopping up of streets deleted as this is not relevant in the context of the authorised development.

Part 6 (Operations)

- 4.41 Article 31 (*Felling or lopping of trees*) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused. It is a model provision. The addition of sub-paragraph (4) has been included to ensure that if any tree which is to be felled or lopped is located within the extent of a publicly maintainable highway then the undertaker cannot fell or lop that tree without the consent of the highway authority. Sub-paragraph (5) requires 14 days' notice to be given to any owner or occupier before entering on any land (save in the case of emergency).
- 4.42 Article 32 (*Protective work to buildings*) is a model provision which allows the undertaker to carry out protective works to buildings within the Order limits, subject to a number of conditions including the service of 14 days' notice (except in the case of emergency) and the payment of compensation. The model provision has been updated to refer to the period following the start of commercial use of the generating station, as the phrase in the model provision (when it is 'open for use'), is not appropriate.

Part 7 (Miscellaneous and General)

- 4.43 Article 33 (*Protective provisions*) provides for Schedule 12, which protects the interests of certain statutory undertakers, to have effect.
- 4.44 Article 34 (*Deemed marine licence*) constitutes deemed consent (as provided for under 149A of the 2008 Act) under section 65 of the Marine and Coastal Access Act 2009, the successor provision to section 34 of the Coast Protection Act 1949. Schedule 13 sets out the terms on which the licence would be granted. The Applicant is engaged in ongoing discussions with the MMO regarding the terms of, and any conditions attached to, the deemed licence.
- 4.45 Article 35 (*Application of landlord and tenant law*) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development.
- 4.46 Article 36 (*Operational land for purposes of the 1990 Act*) is a model provision which has the effect of ensuring that the land on which the authorised development is constructed will be "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act.
- 4.47 Article 37 (*Defence to proceedings in respect of statutory nuisance*) provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of

noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or which cannot be reasonably avoided as a consequence of the authorised development. Article 37 is a model provision.

- 4.48 Article 38 (*Certification of plans etc*) is a model provision which provides for the submission of the various documents referred to in the Order (such as the Book of Reference, plans and ES) to the Secretary of State so that they can be certified as being true copies.
- 4.49 Article 39 (*Service of notices*) deals with the service of notices pursuant to the Order. These provisions are based on those appearing in the Transport and Works (Model Provisions for Railways and Tramways) Order 2006.
- 4.50 Article 40 (*Procedure in relation to certain approvals etc*) provides procedures in relation to consents and approvals required pursuant to the Order. Article 40(1) and (2) apply to all consents or approvals, such as those that may be sought from a street authority (such as pursuant to articles 9(4) or 11(4)(b)), approval by the relevant planning authority to form other access points (article 12(c)) or approval of the owner of a drain to discharge water (article 14(3)). Article 40 does not however apply to approvals pursuant to the requirements (in Schedule 2), for which article 40(3) introduces Schedule 11 which contains a separate, detailed procedure.
- 4.51 Article 41 (*Arbitration*) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision.
- 4.52 Article 42 (Crown rights) reflects the terms of section 135 of the 2008 Act and provides that the Order does not prejudicially affect any estate (etc) of the Crown nor permit the use or interference (etc) with Crown land, and specifically that consent of the Crown authority is required to compulsorily acquire any non-Crown interest in Crown land. The drafting of this article mirrors the approach taken in the Triton Knoll Electrical System Order 2016.

5.0 SCHEDULES

5.1 Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different elements of the Project. This split of the Project between different work numbers enables the Order to refer to different parts of the Project by citing the relevant work number. The split also enables the Order and Works Plans (Application Document Refs. 2.1 and 4.4) to delineate the area within which each 'work' can be constructed, maintained and operated (see article 3(2)). The areas within which each work can be constructed are therefore shown on the Works Plans.

5.2 The works set out in Schedule 1 to the Order are briefly summarised as follows-

- Work No 1 (the generating station) comprising Work No. 1A (the CCGT plant), Work No. 1B (the peaking plant and black start plant) and Work No. 1C (cooling infrastructure for the CCGT);
- Work No. 2A - temporary construction and laydown area;
- Work No. 2B - carbon capture readiness reserve space;
- Work No. 3 (electrical connection works) comprising Work No. 3A (up to 400KV electrical cables and control systems cables to and from the existing National Grid substation) and Work No. 3B (works within the existing National Grid substation);
- Work No. 4 - cooling water connection works;
- Work No. 5 - groundwater and towns water supply connection works;
- Work No. 6 - gas supply pipeline connection works;
- Work No. 7 - an above ground installation comprising Work No. 7A (a compound for National Grid's apparatus) and Work No. 7B (a compound for the undertaker's apparatus);
- Work No. 8 - retained landscaping;
- Work No. 9 - surface water drainage connection to Hensall Dyke; and
- Work No. 10 - accesses and rail infrastructure works.

Work No. 1

5.3 The "generating station" is included at Work No. 1 and comprises three separate elements; being (in summary) the CCGT plant (Work No. 1A), the peaking plant and black start plant (Work No. 1B) and cooling infrastructure for the CCGT (Work No. 1C). The areas of Work Nos. 1A, 1B and 1C 'fill' the Work No. 1 area on the Works Plans, and thus there is no development which is part of Work No. 1 but not included within Work Nos. 1A, 1B and 1C.

5.4 Work No. 1 is drafted so as to impose an overall output capacity cap on the generating station as a whole, whilst granting the undertaker flexibility to procure, construct and operate the most economic and efficient generating station, taking into account advances in technology and the resulting effects on the configuration of the plant. The following sections outline how the drafting contained in Schedules 1, 2 and 14 of the draft DCO work together to achieve this aim, whilst ensuring that the effects assessed in the ES (Application Document Ref 6.1 - 6.4) are not exceeded.

Generating Capacity

- 5.5 The overall gross output capacity of the generating station in Work No. 1 is up to 2,500 megawatts (MW). This ensures that the component parts of Work No. 1 which constitute generating capacity (i.e. Work Nos. 1A and 1B) cannot cumulatively exceed 2,500 MW of gross output capacity when operating at ISO conditions.
- 5.6 The CCGT plant (Work No. 1A) has no specific cap on output capacity, allowing flexibility to accommodate changing technologies as set out above. However the peaking plant and black start plant included at Work No. 1B is subject to a separate cap (within the overall 2,500 MW cap), and cannot exceed an overall gross output capacity of up to 299MW. The limit for the peaking plant, and the specification of "gross" output capacity, is to ensure compliance with the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013. The reference to "gross" matches the approach of the Secretary of State in the Progress Power (Gas Fired Power Station) Order 2015.
- 5.7 The final generating capacity of Work No. 1B will be determined based on a number of factors such as overall UK energy requirements, the need for peaking plant capacity to support the increase in UK renewable generation and, also, the amount of CCGT generation installed within the Proposed Development. The drafting is however constructed so as to ensure that both Work Nos. 1A and 1B, and the resultant generating capacities of each, are subject to the overall cap of 2,500MW specified in Work No. 1 as an "umbrella" cap.
- 5.8 In addition, whilst in practical terms it is not possible for both the existing coal fired power station and the Project to operate at the same time, requirement 4(2) has been included to put beyond doubt that both generating stations cannot operate at the same time.

Technology and Parameters

- 5.9 Work No. 1A is drafted so as to be non-specific as to technology and configuration of the plant, allowing the CCGT plant to be configured as either multi or single shaft layout. As explained in chapter 6 of the ES (Volume 2, Application Document Ref. 6.2) there are a number of regulatory, commercial and technological factors which will influence the decision as to which layout is selected, and the undertaker's ability to procure and deliver both a commercially flexible and highly efficient generating station, taking account of the UK's energy needs, would be constrained if the decision was taken now. On this basis, the undertaker is seeking the flexibility to construct the CCGT plant in either a multi or single shaft configuration.
- 5.10 The mechanics of the drafting in Schedules 1, 2 and 14 ensure that the undertaker does not exceed the basis of the assessment in the ES. This is achieved through a number of mechanisms in the Order which together ensure this:
- Article 3 and Work No. 1 (within Schedule 1) provide the power to build the generating station. Pursuant to article 3(2) each numbered work must be situated within the area delineated on the Works Plans - thus the CCGT plant can only be built within the area for Work No. 1A, the peaking plant can only be built within the area for Work No. 1B and the CCGT cooling towers can only be built within the area for Work No. 1C. Given these over-arching constraints, there is certainty as where each element can be built;
 - Requirement 5(2) (in Schedule 2) provides that prior to the commencement of any part of Work No. 1, the undertaker must notify the relevant planning authority as to whether it is

to construct the plant in either multi or single shaft configuration (either must be within the area shown on the Works Plans for Work No.1A).

- The configuration as notified provides the "relevant parameters", and requirement 5(3) provides that Work No. 1 must be carried out in accordance with these;
- The relevant parameters for Work No.1A are set out in the tables at Schedule 14 - Part 1 contains those for a single shaft configuration and Part 2 those for the multi shaft configuration;
- The relevant parameters set maximums and parameters for relevant elements of the Project, including all those which are relied on for the assessment of effects in the Environmental Statement. These parameters are based on application of the Rochdale Envelope principle, such that maximum building dimensions have been presented and assessed in the environmental statement, recognising that the final building massings may differ from (but will never be larger than) these maxima depending on the technology provider selected;
- In all cases the location of the stacks for the CCGT units are fixed, as are the heights of the top of the CCGT stacks. In this way, the air impact assessment and visual impact assessment of the tallest structures associated with the proposed development are defined and robustly assessed within the environmental statement; and
- In terms of detailed design, requirement 5(1) provides that the undertaker must obtain the approval of the relevant planning authority to the siting, layout, scale and external appearance of all new buildings and structures, prior to commencing these works.

5.11 The combined effect of and relationship between these provisions ensures that whichever option is selected, the Project will not give rise to environmental effects beyond those which have been assessed.

Schedules 2 - 11

5.12 Schedule 2 (*Requirements*) sets out the requirements which apply to the carrying out of and operation of the authorised development under the Order. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been done following discussions with the relevant planning authority and other statutory consultees. The requirements closely relate to the mitigation set out in the ES (Application Document Refs. 6.1 - 6.4) and the Environmental Statement Commitments Register (Application Document Ref. 6.4.26) and a number of them specifically to refer to the ES in order to ensure that the mitigation or other measures outlined in those documents are secured.

5.13 The requirements operate by reference to different stages in the lifetime of the authorised development (or parts of it). In effect, the undertaker may not proceed to these stages until it has met its obligations under the relevant requirements. The stages, which are effectively defined through the terms in article 2 (see above) and the definitions at the beginning of Schedule 2, are as follows:

- "**commencement**" for the purposes of the requirements means beginning to carry out a material operation, other than **permitted preliminary works**, of the authorised development (or a part of it);

- "**commissioning**" means the process of assuring that all systems and components are tested and are operable in accordance with the undertaker's design objectives, specifications and operational requirements;
- "**permitted preliminary works**" are those which can take place before 'commencement', and therefore before the relevant requirement needs to be discharged or complied with (as relevant).

5.14 Certain of the requirements are drafted with a view to distinguishing between the different specific Works Numbers, or more generally different parts of the authorised development. This staged approach follows that agreed by the planning authority in relation to the proposed Knottingley Power Plant Order 2015, and permits an appropriately flexible approach to the discharge of requirements by the undertaker which allows it to (potentially) discharge a requirement in respect of a part of the Project and construct that element, whilst continuing to submit details to discharge the requirement in relation to other parts. This provides an appropriate balance between development not starting until details are approved, and allowing other parts of the Project (where details are already approved) to be constructed.

5.15 Many of the requirements provide for a document (such as details, a method statement, a plan, a programme or scheme) specifying how the undertaker will construct, operate or maintain the authorised development to be submitted for approval to the relevant planning authority, SDC. The model provisions have been adapted throughout to provide that it is for the planning authority to approve the relevant document (rather than, as in the model provisions, the Infrastructure Planning Commission).

5.16 A further departure from the model provisions is in relation to the duty to consult with a third party about a document submitted to the planning authority for approval. Where consultation is required under the draft Order it is, in each case, the planning authority's duty to carry it out before approving a document submitted to it (rather than, as in some of the model provisions, the undertaker's duty to carry it out before submitting the document for approval). Where it is considered that it would be particularly relevant for the planning authority to consult a third party, that third party has been named within the relevant requirement. For example this has been done in response to comments received from NYCC that it be consulted in respect of the discharge of certain requirements such as those relating to highways and transportation matters, given that it is highway authority for the area, and the Environment Agency in relation to requirements which relate to areas which are part of its statutory functions (such as flooding for example). The general approach has been used in other DCOs as made, including the Hinkley Point C (Nuclear Generating Station) Order 2013.

- *Requirement 2: Commencement of the authorised development* - This requirement is based upon the model provisions and requires that the authorised development must can only be commenced within 5 years of the date of the Order coming into force, and also that the undertaker must give the planning authority 14 days' notice of its intention to commence the authorised development.
- *Requirement 3: Notice of commencement and completion of commissioning* - This is not a model provision. It requires the undertaker to give notice to the planning authority of the intended start and completion of commissioning.
- *Requirement 4: Notice of commencement of commercial use and requirement for cessation of existing coal-fired power station electricity generation* - This is not a model provision. It requires the undertaker to notify the planning authority of the intended start of

commercial use of the authorised development. Sub-paragraph (2) makes it clear that the authorised development must not enter commercial use until the existing coal-fired power station has ceased generating electricity.

- *Requirement 5: Detailed Design* - This is based on a model provision. It requires the specific design details of each of the Works Numbers, or parts of them, to be submitted to and approved by the planning authority before commencement, and for the authorised development to be constructed in accordance with those approved details. Specifically, sub-paragraph (2) requires the undertaker to give notice prior to commencing any part of Work No. 1 whether it is to construct that part in accordance with either the multi or single shaft parameters (set out in Schedule 14).
- *Requirement 6: Landscaping and Biodiversity protection management and enhancement* - This is based on a landscaping model provision, however has been modified to include provision for biodiversity protection management and enhancement. It requires the undertaker to submit a landscaping and biodiversity protection plan prior to commencing the authorised development (or any part of it). The plan must set out measures to protect existing tree and shrub planting and avoid impacts on biodiversity and habitats, and must be implemented as approved during the construction period.
- Sub-paragraph (4) requires the undertaker to submit a further biodiversity management and enhancement plan, prior to the commissioning of the authorised development, to be in accordance with the principles of the indicative landscaping and biodiversity strategy. This plan must include specific details as specified in sub-paragraph (5) and must be implemented as approved during operation of the authorised development.
- This approach of splitting out the requirement into two plans provides appropriate protection for the landscaping and biodiversity elements during construction, whilst providing the undertaker with the ability to commence construction without having to have provided full details of all the 'final' landscaping and biodiversity proposals.
- *Requirement 7: Public rights of way diversions* - This is based on a model provision. It requires that before any part of the authorised development is commenced, a public rights of way management plan for any public rights of way that are to be temporarily closed or diverted for that part must be submitted to and approved by the relevant planning authority.
- *Requirement 8: External lighting* - This is based upon a model provision and requires the undertaker to submit details of all external lighting to be installed during construction to the planning authority for approval before the relevant part of the authorised development may commence. Sub-paragraph (2) contains an equivalent provision for the operation of the authorised development which requires the scheme to be submitted prior to commissioning.
- *Requirement 9: Highway accesses* - This is a modified model provision. It provides that no part of the authorised development may commence until details of any new, modified or temporary means of access to 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 for that part have been submitted to and approved by the planning authority.
- The requirement identifies that consultation should take place with NYCC as highway authority for the area. The highway accesses must be constructed prior to the start of construction of the relevant part of the authorised development (other than the

construction of the accesses). Where the accesses are temporary they must be reinstated prior to the authorised development being brought in to commercial use.

- *Requirement 10: Means of enclosure* - This is based on a model provision. It requires that no part of the authorised development may commence until details of all temporary means of enclosure have for that part been submitted to and approved by the planning authority, including a programme for the removal of such temporary means of enclosure. It also requires that the authorised development may not be brought into commercial use until the permanent means of enclosure have been approved and completed.
- *Requirement 11: Site security* - above ground installation (Work No. 7) - This is not a model provision. It requires that no part of the authorised development comprised in Work No. 7 must be brought in to use until a scheme detailing security measures to minimise crime has been approved by the relevant planning authority (in consultation with NYCC). This requirement is included in part in response to matters raised by the local community in relation to the proposed AGI during consultation.
- *Requirement 12: Fire prevention* - This is not a model provision. It provides that no part of the authorised development must commence until a fire prevention method statement has been submitted to and approved by the relevant planning authority.
- *Requirement 13: Surface and foul water drainage* - This is based on a model provision. It provides that no part of the authorised development may commence until details of the temporary surface and foul water drainage systems for that part, in accordance with the Construction Environmental Management Plan and the ES, have been submitted to and approved by the planning authority (in consultation with the lead local flood authority, the relevant internal drainage board and the Environment Agency). The systems must be constructed in accordance with the approved details. The undertaker must then also obtain the approval of the planning authority of the equivalent permanent systems, which must occur prior to the start of construction of any part of those systems.
- *Requirement 14: Flood risk mitigation* - This is not a model provision. It provides that no part of the authorised development may commence until a scheme for the mitigation of flood risk during construction has, for that part, been submitted to and approved by the planning authority. The scheme must be in accordance with the principles set out in the ES and the requirement makes clear that the planning authority should consult with the Environment Agency prior to approving the schemes. A further scheme in relation to the operational stage must subsequently be submitted by the undertaker. The schemes must be approved, respectively (i) prior to the construction of the authorised development and (ii) prior to commissioning of the authorised development, and must be implemented throughout the construction and operation periods as applicable. The requirement also secures the approval and implementation of a flood emergency response and contingency plan.
- *Requirement 15: Contaminated land and groundwater* - This is a modified model provision. It provides that no parts of the authorised development may commence until a scheme (to include a risk assessment and, if necessary, a site investigation) to deal with the contamination of land has, for that part, been submitted to and approved by the planning authority. It requires that the submitted scheme must be in accordance with the principles set out in the ES and also the Construction and Environmental Management Plan. It requires the planning authority to consult with the Environment Agency on the submitted scheme.

- *Requirement 16: Archaeology* - This is a modified model provision. It provides that no part of the authorised development may commence until a Scheme of Archaeological Investigation for that part has been submitted to and approved by the planning authority after consultation with the relevant archaeological body. The scheme submitted and approved must be in accordance with the principles set out in the Environmental Statement. Furthermore, any archaeological investigations must be carried out in accordance with the approved scheme and by a suitably qualified person or organisation approved by the planning authority.
- *Requirement 17: Protected species* - This is a modified model provision. It requires that no part of the authorised development may commence until further survey work for that part has been carried out to establish the presence of any protected species. Should the survey work identify any protected species, no 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 planning authority. This requirement is broader than the model provision in that it refers to "any" protected species, rather than just European protected species.
- *Requirement 18: Construction environmental management plan* - This is a modified version of the model provision on 'Code of Construction Practice'. It requires a Construction and Environmental Management Plan, in accordance with the indicative landscaping and biodiversity strategy and providing all of the details set out in sub-paragraph (2), to be submitted to and approved by the planning authority before commencement of the authorised development. All construction works must be in accordance with the approved Construction and Environmental Management Plan.
- *Requirement 19: Protection of highway surfaces* - This is not a model provision. It requires details of the condition surveys (including any post-construction surveys) which are to be carried out on the public highways to be used during construction to be submitted to the planning authority prior to commencement of the authorised development.
- *Requirement 20: Construction traffic and routing management plan* - This is a modified model provision. It requires a Construction Traffic Routing and Management Plan to be submitted to and approved by the planning authority, following consultation with NYCC as highway authority, before commencement of the relevant part of the authorised development. It also requires notices to be erected and maintained throughout the construction period at every entrance to and exit from the construction site, indicating the approved routes for traffic entering and leaving the site.
- *Requirement 21: Travel plan - construction staff* - This is a modified model provision. It requires a travel plan for construction staff to be submitted to the planning authority. The plan must include measures to encourage sustainable transport; details of the responsibility for and timetable for implementation of those measures; details of parking for construction personnel, and a monitoring and review regime. The approved plan (which is to be approved in consultation with NYCC as the highway authority) must be implemented within three months of commencement of the authorised development.
- *Requirement 22: Construction hours* - This is a modified model provision. It specifies the hours in the day within which all construction work associated with the authorised development must be carried out. The restrictions do not apply to work that does not exceed a specified noise limit, is approved in advance by the planning authority or is associated with an emergency. The requirement also permits a 30 minute start-up and

shut-down period at the beginning and the end of the day in relation to the specified construction hours.

- *Requirement 23: Control of noise and vibration - construction* - This is a modified model provision. It requires a scheme for the monitoring and control of noise and vibration to be submitted and approved prior to the commencement of the authorised development.
- *Requirement 24: Control of noise - operation* - This requires that no part of the authorised development must be brought in to commercial use until a scheme for the management and monitoring of noise during operation has been submitted to and approved by the planning authority. The noise level is to be determined with reference to BS4142:2014.
- *Requirement 25: Piling and penetrative foundation design* - This is not a model provision. It requires that no part of Work No. 1 must commence until a piling and penetrative foundation design method statement, informed by a risk assessment, has been submitted to and approved with by the planning authority. It requires that the planning authority must consult with the Environment Agency on the method statement.
- *Requirement 26: Waste management on site - construction wastes* - This is not a model provision. It requires that no part of the authorised development may commence until a Construction Site Waste Management Plan for that part has been submitted to and approved by the planning authority.
- *Requirement 27: Restoration of land used temporarily for construction* - This is modified model provision. It prevents the authorised development being brought into commercial use until the 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. It stipulates that the land must be restored within three years of the authorised development being brought into commercial use (or such other period as may be approved by the planning authority), in accordance with the restoration scheme and the landscaping and biodiversity management and enhancement plan.
- *Requirement 28: Combined heat and power* - This is not a model provision. It is based, with drafting modifications, on requirement 34 of the North Blyth Biomass Power Station Order 2013 and requirement 39 of the Ferrybridge Multifuel 2 Power Station Order 2014. It requires the planning authority to give notice, before first commercial use of the authorised development, that it is satisfied that the authorised development includes space and routes through the later provision of heat pass-puts for off-site users of process or space heating and its later connection to such systems. The undertaker must maintain such space and routes for the lifetime of the authorised development and must submit a CHP review to the planning authority 12 months after first commercial use updating the combined heat and power assessment. The undertaker must submit an updated CHP review to the planning authority every 5 years.
- *Requirement 29: Aviation warning lighting* - This is not a model provision. It requires details of the aviation warning lighting to be installed for the construction and operation of Work No. 1 to be approved. It requires the planning authority to consult with the Civil Aviation Authority on the submitted details.
- *Requirement 30: Air safety* - This is not a model provision. It requires details of the information required by the Defence Geographic Centre of the Ministry of Defence to be submitted to and approved by the planning authority before commencement of the authorised development.

- *Requirement 31: Carbon capture readiness site* - This is not a model provision. It requires that until such time as the authorised development is decommissioned, the undertaker must not dispose of its interest in the carbon capture readiness site, or do anything which may diminish the undertaker's ability (within two years of such action or occurrence) to prepare the carbon capture readiness site for the installation of carbon capture equipment, if deemed necessary to do so.
- *Requirement 32: Carbon capture readiness monitoring report* - This requires that on or before three months from first commercial use, and subsequently thereafter at set periods stated in the requirement, the undertaker must submit a report to the SoS providing evidence that the undertaker has complied with Requirement 31 (carbon capture readiness site), and whether the undertaker considers the retrofit of carbon capture technology is feasible providing reasons for that conclusion.
- *Requirement 33: Local liaison committee* - This is not a model provision. It requires that before the authorised development commences, the undertaker must establish a committee to liaise with local residents and organisations about matters relating to the authorised development. Relevant interest groups and the planning authority must also be invited and a representative of the undertaker must be in attendance. The committee must meet every other month, starting in the month prior to commencement of the authorised development throughout construction, and then once a year during operation.
- *Requirement 34 - Employment, skills and training plan* - This is not a model provision, and has been included to secure an employment, skills and training plan, particularly in relation to local people. A similar requirement was included in the Knottingley Power Plant Order 2015 (at requirement 36).
- *Requirement 35: Decommissioning* - This is not a model provision. It requires the undertaker to submit a Decommissioning Environmental Management Plan, in accordance with the ES, to the planning authority within 12 months of it deciding to decommission the authorised development. The planning authority must approve the scheme before any decommissioning works are carried out and the scheme must be implemented as approved.
- *Requirement 36: Requirement for written approval* - This is a modified model provision and has been amended to reflect that the planning authority rather than the Infrastructure Planning Commission will be responsible for discharging the requirements. It confirms that the planning authority's approval or agreement must be given in writing.
- *Requirement 37: Approved details and amendments to them* - This is not a model provision. It requires that all details submitted to the planning authority for approval must be in accordance with the parameters in the Environmental Statement and reflect the principles of the documents submitted for certification (in accordance with article 38). It expressly states that "approved details" includes any amendments which may be subsequently approved by the planning authority.
- *Requirement 38: Amendments agreed by the relevant planning authority* - This is a modified model provision. This clarifies that where the phrase "unless otherwise agreed" appears in requirements, it does not permit changes which would or could take the Project outside the scope of the environmental statement. It also makes clear that where the requirement requires the planning authority to consult with another body, then any approval or agreement to any amendments must not be given without the planning authority having first consulted with that body.

-
- 5.17 Schedule 3 (*Streets subject to street works*) sets out the streets that would be subject to street works (including reference to the relevant plan, the location and the specific street).
- 5.18 Schedule 4 (*Streets subject to permanent and temporary alteration of layout*) sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2).
- 5.19 Schedule 5 (*Access*) sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) and those parts of works to restore temporary accesses that are to be maintained by the street authority (Part 3) which are referred to in article 10 of the Order.
- 5.20 Schedule 6 (*Streets to be temporarily stopped up*) sets out the streets that will be subject to a temporary stopping up (including reference to the relevant plan, the location and the extent of the temporary stopping up).
- 5.21 Schedule 7 (*Part 1 - Public rights of way to be temporarily stopped up*) sets out the public rights of way that may be temporarily stopped up by the undertaker in carrying out the authorised development. Part 2 of Schedule 7 (Public rights of navigation to be temporarily suspended) sets out the public rights of navigation in the River Aire that may be temporarily suspended by the undertaker in carrying out the authorised development.
- 5.22 Schedule 8 (Land in which only new rights etc. may be acquired) specifies both the areas of land in which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the Land Plans.
- 5.23 Schedule 9 (*Modification of compensation and compulsory purchase enactments for creation of new rights*) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in DCOs as made, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the National Grid (King's Lynn B Power Station Connection) Order 2013. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.
- 5.24 Schedule 10 (*Land of which temporary possession may be taken*) sets out the land of which only temporary possession may be taken, pursuant to article 26. This land is shown yellow on the Land Plans.
- 5.25 Schedule 11 (*Procedure for discharge of requirements*) provides a bespoke procedure for the discharge of requirements by the relevant planning authority. It sets out time periods within which decisions must be made, and provides for deemed approval of the requirements in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application in relation to a requirement or if the relevant planning authority requires further information to be provided in relation to that application.
- 5.26 Schedules similar to Schedule 11 have been used in various orders and can be seen in a similar form in the Hinkley Point C (Nuclear Generating Station) Order 2013, as amended, and the National Grid (King's Lynn B Power Station Connection) Order 2013. The bespoke process is required in order to ensure that requirements are dealt with efficiently so that the authorised development is not held up. Deemed consent of requirements is required for the same reason and ensures that the nationally-needed Project will not be held up by the discharge of requirements.

- 5.27 Schedule 12 (*Protective provisions*) sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. The undertaker has engaged with relevant statutory undertakers and will continue to do so following submission of the Application with a view to agreeing bespoke protective provisions for inclusion in the Order (or where appropriate to agreeing terms for such provisions outside the Order itself).
- 5.28 Schedule 13 (*Deemed Marine Licence*) sets out the marine licence referred to in article 33, which would be deemed to be granted for works comprised in the authorised development. The undertaker has engaged, and will continue to engage with the MMO following submission on the terms of Schedule 13.
- 5.29 Schedule 14 (*Design Parameters*) (*Parts 1 and 2*) sets out the relevant parameters for either single or multi-shaft configurations in accordance with requirement 5. See the explanation provided for Schedule 1 above as to how this schedule operates alongside the relevant articles and schedules.