



Deadline 5: Applicant's Response to the Examining Authority's Further Written Questions (ExQ3)

Appendix E – Ferrybridge Multifuel 2 (FM2) Recommendation Report to Secretary of State

Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility Development Consent Order

PINS Ref: EN010083

Document 13.2

June 2020 – Deadline 5





# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008 (as amended)**

**Ferrybridge Multifuel 2 (FM2)**

**Examining Authority's Report of Findings and Conclusions**

**and**

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

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**Examining Authority**

**Dr Michael Ebert, MSc, PhD, CEng, MICE, FIC, CMC**

**29 July 2015**

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**ExA's findings, conclusions and recommendation in respect of the proposed generating station, known as Ferrybridge Multifuel 2 (FM2) Power Station.**

**File Ref: EN010061**

The application, dated 30 July 2014, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 31 July 2014.

The Applicant is Multifuel Energy Limited.

The application was accepted for examination on 20 August 2014.

The examination of the application began on 5 December 2014 and was completed on 29 April 2015

The Proposed Development comprises:

- a multifuel power station (referred to as the 'power station') that will be capable of generating up to 90MWe (Megawatts electrical) gross of electricity from the combustion of waste derived fuel from various sources of processed municipal waste, commercial and industrial waste and waste wood
- a new electrical connection (referred to as the 'grid connection') to export electricity from the power station to the electricity grid
- improvements to an existing access road known as the 'unnamed road' to provide an alternative means of access for cars and light goods vehicles to access the power station from Stranglands Lane
- a new foul water connection between the power station and the existing foul water drainage network.

**Summary of Recommendation:**

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

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# **1 INTRODUCTION**

## **1.0 PLANNING ACT 2008 (AS AMENDED)**

1.0.1 The application, dated 30 July 2014, was made under Section (s) 37 of the Planning Act 2008 (PA2008) and was received in full by the Planning Inspectorate on 31 July 2014.

1.0.2 The Applicant is Multifuel Energy Limited [AD-004]. Multifuel Energy Ltd (MEL) is a joint venture between SSE Generation Limited and Wheelabrator Technologies Inc. The application was accepted for examination on 20 August 2014. The examination of the application began on 5 December 2014 and was completed on 29 April 2015.

1.0.3 The Proposed Development, comprises:

- a multifuel power station (referred to as the 'power station') that will be capable of generating up to 90MWe (Megawatts electrical) gross of electricity from the combustion of waste derived fuel from various sources of processed municipal waste, commercial and industrial waste and waste wood
- a new electrical connection (referred to as the 'grid connection') to export electricity from the power station to the electricity grid
- improvements to an existing access road known as the 'unnamed road' to provide an alternative means of access for cars and light goods vehicles to access the power station from Stranglands Lane
- a new foul water connection between the power station and the existing foul water drainage network.

1.0.4 This document is the Examining Authority's (ExA's) Report to the Secretary of State for Energy and Climate Change (SSECC). It sets out the ExA's findings and conclusions and the recommendation, as required by s.83(1) of PA2008.

1.0.5 The application project is a Nationally Significant Infrastructure Project (NSIP) as defined by s.14(1)(a) and s.15 of PA2008.

1.0.6 The Applicant gave notice [CERT-01] under s.56 of the PA2008 to the persons prescribed that the application had been accepted and gave them an opportunity to make Relevant Representations. The notice dated 17 October 2014 certified that this had been carried out. Twenty five Relevant Representations were subsequently received [RR-01 to RR-25].

## **1.1 APPOINTMENT OF EXAMINING AUTHORITY**

1.1.1 On 8 October 2014, the Secretary of State for Communities and Local Government appointed a single examining inspector as the Examining Authority (ExA) for the application under Section 79 of the PA2008 (as

amended) [PrD-03]. The single examining inspector is Dr Michael Ebert MSc PhD CEng MICE FIC CMC.

## **1.2 THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.2.1 On 10 November 2014, notice was given [PrD-03] of the Preliminary Meeting which was held on 4 December 2014, at which the Applicant and all other interested parties and statutory parties were able to make representations about how the application should be examined. The examination commenced the following day, 5 December 2014.
- 1.2.2 The timetable for the examination [PrD-04], a procedural decision of the ExA under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), was issued to interested parties on 11 December 2014. It was accompanied by the ExA's invitation to submit Statements of Common Ground (SoCG), written representations, comments on relevant representations, requests for notification to be heard at a hearing and notification of wish to attend a site inspection.
- 1.2.3 Under s.60 of PA2008 an invitation was also issued to the relevant Local Authorities to submit a Local Impact Report (LIR) in the Rule 8 letter [PrD-04]. A joint LIR between Selby District Council (SDC) and North Yorkshire County Council (NYCC) [D1-016] and a LIR produced by the Local Planning Authority, Wakefield Metropolitan District Council (WMDC) [D1-001], were received.
- 1.2.4 The ExA issued his First Written Questions [PrD-05] on 18 December 2014. Responses to these questions were received at Deadline 1, 22 January 2015 [D1-001 - D1-019]. No other questions or requests for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 were issued.

## **1.3 SITE INSPECTIONS**

- 1.3.1 In addition to an unaccompanied site visit to see the site, local viewpoints and the surrounding area, the ExA carried out an accompanied site inspection in the company of interested parties on Tuesday 17 March 2015.

## **1.4 OTHER CONSENTS REQUIRED**

- 1.4.1 The Applicant has provided information on other consents and licences that may be required under other legislation for the construction and operation of Ferrybridge Multifuel 2 [AD-034]. This document was updated by the Applicant at Deadline 3, 13 March 2015 [D3-003].



## **1.5 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA).**

- 1.5.1 There were no s.102 requests to become or withdraw from being an interested party received during the Ferrybridge Multifuel 2 examination.

## **1.6 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT APPLICATION**

- 1.6.1 There are no undertakings or obligations supporting the Ferrybridge Multifuel 2 application.

## **1.7 STRUCTURE OF REPORT**

- 1.7.1 Chapter 1 *Introduction* outlines the main features of the examination.
- 1.7.2 Chapter 2 *Main Features of the Proposal and Site* summarises the application as made and at the close of the examination.
- 1.7.3 Chapter 3 *Legal and Policy Context* outlines the legal and policy context that ExA considers applies to this application.
- 1.7.4 Chapter 4 *Findings and Conclusions in Relation to Policy and Factual Issues* draws out ExA's findings and conclusions for each of the areas of the examination.
- 1.7.5 Chapter 5 *The Examining Authority's Conclusion on the Case for Development Consent* summarises ExA's opinion on each of the topics in Chapter 4 to distil the case for development consent.
- 1.7.6 Chapter 6 *Draft Development Consent Order (DCO)* identifies the journey leading to the draft DCO in the final form tabled by the Applicant at Deadline 4 [D4-004] and ExA in Appendix A to this document.
- 1.7.7 Chapter 7 *Summary of Findings, Conclusions and Recommendation* draws the report together and makes a recommendation to the SSECC.

## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **2.0 THE APPLICATION AS MADE**

- 2.0.1 Multifuel Energy Limited (the Applicant), which is a partnership between SSE Generation Ltd and WTI/EfW Holdings Ltd, a subsidiary of Wheelabrator Technologies Inc., proposes to develop a new 'multifuel' power generating station with a gross electrical output of up to 90 megawatts electrical (MWe), together with associated development at the Ferrybridge Power Station site, Knottingley, West Yorkshire.
- 2.0.2 The Proposed Development for the purposes of the examination and this report is Ferrybridge Multifuel 2 (FM2) Power Station. FM2 would produce electricity through the use of fuels derived from waste products from various sources including municipal, commercial and industrial waste, including waste wood [AD-010]. The Proposed Development is a Nationally Significant Infrastructure Project (NSIP) as it would be an onshore generating station with an average gross electrical output in excess of 50MW (PA2008 s.14 and s.15(2)(c)).
- 2.0.3 The Application site covers approximately 32 hectares between the River Aire and the A1(M), on land that was originally part of a former golf course for the Ferrybridge power station, adjacent to the Ferrybridge Multifuel 1 (FM1) Power Station, another multifuel power station currently under construction on land adjacent to the existing Ferrybridge "C" coal fired Power Station. The Application site is located close to Knottingley, West Yorkshire [AD-012].
- 2.0.4 The Project would comprise the following principal elements:
- the multifuel power station and all the components required for the development such as fuel reception and storage facilities, the combustion system, steam turbine and emissions stack (Work No. 1 in the draft DCO) [AD-006, D4-004]
  - associated development [AD-010].
- 2.0.5 The associated development for the project mentioned above which will support the operation of the multifuel power station is:
- a new connection to the electricity grid network (Work No. 2 in the draft DCO)
  - improvements to an existing access road (Work No. 3 in the draft DCO)
  - a new foul water connection (Work No. 4 in the draft DCO)
  - other associated development relating to Works 1, 2, 3 and 4 above in the draft DCO.

## **2.1 THE APPLICATION AT THE CLOSE OF EXAMINATION**

- 2.1.1 No formal requests to amend the application during examination were made.
- 2.1.2 In addition to the draft DCO as originally submitted [AD-006], two further iterations were submitted. One was at Deadline 2 on 17 February 2015 [D2-003] and a final version was at Deadline 4 on 2 April 2015 [D4-004].
- 2.1.3 ExA has made one recommended amendment in the draft DCO at Appendix A. This is at Schedule 7 Clause 3(2), and it is discussed in Section 6.4 below.

## **2.2 RELEVANT PLANNING HISTORY**

- 2.2.1 In the immediate vicinity of the application site there has been a history of development for power generation at the Ferrybridge Power Station since the 1920s, including the development of the currently operational Ferrybridge 'C' coal-fired Power Station, which was approved in 1961 [AD-035].
- 2.2.2 Ferrybridge 'C' encompassed land that had originally formed part of the Ferrybridge 'B' Power Station, which has ceased operation. Ferrybridge 'C' comprises four generation units (Units 1-4) each with a generating capacity of 500MWe (2000MWe or 2 Gigawatts (GWe) in total). Units 1 and 2 ceased to operate in 2014. Units 3 and 4 continue to operate. Ferrybridge 'C' has a coal storage area and associated rail link (used to deliver coal) which is located in the northern part of the Power Station site [AD-035].
- 2.2.3 Consent was granted by the Secretary of State for Energy and Climate Change in October 2011 for a Ferrybridge Multifuel power station (FM1) with up to 108 MWe gross output under Section 36 (S36) of the Electricity Act 1989 [AD-035]. Construction and commissioning is due to be complete in the last quarter of 2015, so FM1 is expected to be operational while FM2 is being constructed.
- 2.2.4 A copy of the FM1 Section 36 consent and the Secretary of State's decision letter is provided at Appendix 1 of the FM2 application Planning Statement [AD-035]. The Planning Statement states that *"FM1 will also generate electricity from waste derived fuel (although the s.36 consent provides for the combustion of biomass fuel stocks) and is currently being built on land to the south of where the Proposed Development for FM2 will be located. As part of the FM1 works, the existing rail spur/siding has been upgraded and extended and a new unloading gantry constructed adjacent to it to allow for the delivery of fuel/removal of ash by rail. The Proposed Development will be able to make use of this facility, subject to fuel suppliers and contracts"*.
- 2.2.5 Planning conditions attached to the FM1 consent, amongst other matters, required the provision of alternative sports facilities, as the

FM1 works involved the use of land within the power station site that had previously been used for golf, cricket and football [AD-035]. This has included the provision of a new cricket pitch and pavilion within the Power Station site and a new football pitch to the south in Knottingley. Members of the Power Station golf course have been provided with membership at another local golf club. Planning permission has recently been granted for a new golf course across the A1(M) to the north-west of the Power Station site [AD-035].

### **3 LEGAL AND POLICY CONTEXT**

#### **3.0 PLANNING ACT 2008 (AS AMENDED)**

- 3.0.1 The Proposed Development is a multifuel generating station with a capacity of up to 90 MWe Gross, which is a Nationally Significant Infrastructure Project (NSIP) as defined by s.14(1)(a) and s.15 of PA2008. The Secretary of State must therefore have regard to s.104 of the PA2008 which states that *"In deciding the application the Secretary of State must have regard to...any national policy statement that has effect in relation to development of the description to which the application relates"*. S.104 applies subject to certain exceptions.
- 3.0.2 Whilst other policies, including those contained in the development plans for the area, may constitute matters that the Secretary of State may regard as important and relevant to the decision, the primacy of the National Policy Statement (NPSs) is clear (PA2008 s.104(3) and NPS EN-1, paragraph 1.1.1). In the event of a conflict between policies contained in any other documents (including development plan documents) and those contained in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).
- 3.0.3 The Planning Statement [AD-035] and the Environmental Statement (ES) [AD-044] which accompany the application describe the main legal and policy context as understood by the Applicant.
- 3.0.4 This report sets out the ExA's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s.104 of PA2008.

#### **3.1 NATIONAL POLICY STATEMENT(S)**

- 3.1.1 The ExA has had regard first and foremost to the requirements of the PA2008, as amended. In relation to s.104 the ExA has had regard to the matters in subsection (2).
- 3.1.2 There are two relevant NPSs for Energy in force (s.104 (2) (a) of Planning Act 2008):
- Overarching NPS for Energy (NPS EN-1)
  - NPS for Renewable Energy Infrastructure (NPS EN-3).
- 3.1.3 These two NPSs formed the primary policy context for this examination. These were formally designated as statements of national policy and presented to Parliament in accordance with s.5(9) of the PA2008 in July 2011, and the ExA's views on their significance for this application are set out in Chapter 4.
- 3.1.4 Section 1.1.2 of EN-1 states that:

*"The Planning Act 2008 also requires that the IPC must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent it is satisfied that to do so would:*

- lead to the UK being in breach of its international obligations;*
- be in breach of any statutory duty that applies to the IPC;*
- be unlawful;*
- result in adverse impacts from the development outweighing the benefits; or*
- be contrary to regulations about how its decisions are to be taken."*

### **3.2 LOCAL IMPACT REPORTS**

3.2.1 In relation to s.104 of PA2008, the ExA has had regard to the matters in subsection (2)(b).

3.2.2 There is a requirement under s.60(2) of PA2008 to give notice in writing to each local authority falling under s.56A inviting them to submit Local Impact Reports (LIRs). This notice was given on 11 December 2014 [PrD-04].

3.2.3 Two LIRs have been submitted: by WMDC [D1-001] and jointly by SDC and NYCC [D1-016]. These are considered in Chapter 4 of this Report.

### **3.3 INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS**

3.3.1 The application is also subject to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), which require the Secretary of State to take the environmental information into consideration before taking a decision.

3.3.2 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended). The application was accompanied by an Environmental Statement (ES) [AD-044 - AD-087]. In reaching conclusions and recommendation, the environmental information as defined in Regulation 2(1) (including the ES and all other information on the environmental effects of the development) has been taken into consideration (see Section 4).

### **3.4 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS HABITATS DIRECTIVE AND BIRDS DIRECTIVE**

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

two pillars: the Natura 2000 network of protected sites, including special areas of conservation (SAC) and the strict system of species protection.

- 3.4.2 The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.4.3 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles and require a competent authority, before giving consent for a plan or project which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans and projects) and is not directly connected with or necessary to the management of that site, to make an appropriate assessment of the implications for that site in view of that site's conservation objectives.
- 3.4.4 The Habitats Regulations define a 'European site' as including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). In addition, as a matter of policy, the Government also applies the procedures under the Habitats Regulations to potential SPAs, Ramsar sites, proposed Ramsar Sites and sites identified, or required, as compensatory measures for adverse effects on Natura 2000 sites, which are collectively referred to as a 'European sites'.
- 3.4.5 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species.
- 3.4.6 The application of the Habitats Regulations is discussed in Chapter 4 of this report.

#### **WETLANDS CONVENTION**

- 3.4.7 The UK is also bound by the terms of the Convention on Wetlands of International Importance 1971 (the Ramsar Convention), resulting in the designation of Ramsar sites in the UK, which are wetlands of international importance.

## **WATER FRAMEWORK DIRECTIVE**

- 3.4.8 On 23 October 2000, the *"Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy"* or, in short, the EU Water Framework Directive (WFD) was adopted.
- 3.4.9 The Directive was published in the Official Journal (OJ L 327) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2000<sup>1</sup>.
- 3.4.10 Twelve "Water Notes" which give an introduction and overview of key aspects of the implementation of the Water Framework Directive are available to download.<sup>2</sup>

## **INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL (IPPC)) AND (THE "INDUSTRIAL EMISSIONS DIRECTIVE" ("IED"))**

- 3.4.11 Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) of 24 November 2010 recast seven directives related to industrial emissions, in particular Directive 2008/1/EC of 15 January 2008 concerning Integrated Pollution Prevention and Control (the IPPC Directive) and Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (the Large Combustion Plant Directive (LCPD)), into a single legislative instrument to improve the permitting, compliance and enforcement regimes adopted by Member States.
- 3.4.12 The Large Combustion Plant Directive and Integrated Pollution Prevention and Control Directive are implemented in the UK by the Environmental Permitting (England and Wales) Regulations 2010 (the EP Regulations).
- 3.4.13 The Environmental Permitting (England and Wales) Regulations 2007 sought to introduce a single streamlined environmental permitting (EP) and compliance regime to apply in England and Wales. They do this by integrating the previous regimes covering waste management licensing and Pollution Prevention and Control. The EP Regulations 2010 increase the scope of the 2007 Regulations.
- 3.4.14 The Environment Agency (EA) will control and regulate the Proposed Development with respect to the emissions to air via an Environmental Permit that will be required for the Proposed Development, under the EP Regulations. The Environmental Permit will include specific emissions limit values to apply to the Proposed Development for the

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT>

<sup>2</sup> [http://ec.europa.eu/environment/water/participation/notes\\_en.htm](http://ec.europa.eu/environment/water/participation/notes_en.htm)



relevant pollutants considered within the Industrial Emissions Directive. The application of these regulations is discussed in Section 4 below.

### **AMBIENT AIR QUALITY DIRECTIVE**

- 3.4.15 Council Directive 96/62/EC on ambient air quality assessment and management (the Air Quality Framework Directive) described the basic principles as to how air quality should be assessed and managed in the Member States. Subsequent Directive 2008/50/EC of 21 May 2008 introduced numerical limits, thresholds and monitoring requirements for a variety of pollutants including oxides of nitrogen and sulphur dioxide to guarantee that there are no adverse effects with regard to human health.
- 3.4.16 The Air Quality Standards Regulations 2010 (the AQS Regulations) give effect, in England, to the Ambient Air Quality Directive. The relevance of these standards to this application is discussed in Section 4 below.

### **WASTE FRAMEWORK DIRECTIVE**

- 3.4.17 The Waste Framework Directive (WFD) 2008/98/EC sets the basic concepts and definitions related to waste management, such as definitions of waste, recycling and recovery. It explains when waste ceases to be waste and becomes a secondary raw material (so called end-of-waste criteria), and how to distinguish between waste and by-products. The Directive lays down some basic waste management principles: it requires that waste be managed without endangering human health and harming the environment, and in particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest. Waste legislation and policy of the EU Member States shall apply as a priority order the following waste management hierarchy: prevention, preparing for reuse, recycling, recovery and disposal (Article 4).
- 3.4.18 The Waste (England and Wales) (Amendment) Regulations 2012 were laid before Parliament and the Welsh Assembly on 19 July 2012 and came into force on 1 October 2012. The amendments were in relation to the earlier Waste (England and Wales) Regulations 2011, which establish the WFD in England and Wales, and the regulations relate to the separate collection of waste of different types.
- 3.4.19 The Waste Regulations introduce the waste hierarchy, waste management plans and waste prevention programmes into statute, as well as the proximity principle/ nearest appropriate installation (NAI).
- 3.4.20 The application of these regulations is discussed in Section 4 below.

## **CARBON CAPTURE READINESS**

- 3.4.21 The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013, No. 2696, came into force on 25 November 2013. The Regulations state in Section 2:

*"For the purposes of these Regulations, the carbon capture readiness (CCR) conditions are met in relation to a combustion plant, if, in respect of all of its expected emissions of CO<sub>2</sub>:*

- (a) suitable storage sites are available;*
- (b) it is technically and economically feasible to retrofit the plant with the equipment necessary to capture that CO<sub>2</sub>; and*
- (c) it is technically and economically feasible to transport such captured CO<sub>2</sub> to the storage sites referred to in sub-paragraph (a)".*

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

## **3.5 OTHER LEGAL AND POLICY PROVISIONS**

### **UNITED NATIONS ENVIRONMENT PROGRAMME CONVENTION ON BIOLOGICAL DIVERSITY 1992**

- 3.5.1 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.5.2 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA must have regard to this Convention in its consideration of the likely impacts of the Proposed Development and appropriate objectives and mechanisms for mitigation and compensation.
- 3.5.3 This is of relevance to EIA matters discussed in chapter 4.

## **3.6 TRANSBOUNDARY EFFECTS**

- 3.6.1 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (EIA Regulations), the Secretary of State screened the Proposed Development for potential transboundary effects on 23 September 2013 and 27 August 2014 and concluded that the Proposed Development is not likely to have a significant effect on the environment in another European Economic Area (EEA) State [PrD-07]. In reaching this view the Secretary of State applied the

precautionary approach. Consultation on transboundary issues under Regulation 24 of the EIA Regulations was therefore not considered necessary.

- 3.6.2 On this basis, the ExA was of the view that the Proposed Development was unlikely to have significant effects on the environment in another EEA State and therefore the ExA did not consider potential transboundary effects further during the examination.

### **3.7 NATIONAL PLANNING POLICY FRAMEWORK**

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

- 3.7.2 The NPPF states in paragraph 3 that it:

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

- 3.7.3 NPPF policies are not a material consideration under the PA2008, but are important and relevant to this application in certain parts. These are highlighted in Section 4 below.

- 3.7.4 On 6 March 2014 the previous planning guidance documents were replaced by the new Planning Practice Guidance (PPG). The guidance supports the NPPF and is designed to provide useful clarity on the practical application of policy.

### **3.8 NATIONAL WASTE POLICY**

- 3.8.1 National waste policy in England is captured in the following documents:

- (1) Review of Waste Policy in England (2011);
- (2) Waste (England and Wales) (Amendment) Regulations 2012 (see Waste Framework Directive above);
- (3) Waste Management Plan for England (2013);
- (4) National Planning Policy for Waste (2014).

- 3.8.2 These documents should be read in conjunction with the National Planning Policy Framework (see above) and relevant NPSs.

### **3.9 THE DEVELOPMENT PLAN**

3.9.1 Paragraph 4.1.5 of EN-1 states:

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

3.9.2 The application site lies entirely within the administrative area of WMDC. The development plan policy for WMDC comprises:

- The 'saved' policies of the Wakefield District Unitary Development Plan (2003)
- WMDC Core Strategy Development Plan Document (2009)
- WMDC Development Policies Development Plan Document (2009)
- WMDC Waste Development Plan Document (2009)
- WMDC Local Development Framework Policies Map (2012)
- WMDC Site Specific Policies Local Plan (2012).

3.9.3 While the Proposed Development lies entirely within the administrative area of WMDC, the site is located close to the boundary of SDC to the east. The EIA undertaken for the Proposed Development has had regard to the development plan policies in place within SDC that relate to the environmental topics that have been assessed.

3.9.4 Conformity with the local development plan policies is assessed in Chapter 4 below.

### **3.10 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO**

3.10.1 The ExA was aware of the need to consider whether changes to the application meant that the application had changed to the point where it was a different application and whether the Secretary of State would have power therefore under s.114 of PA2008 to make a DCO having regard to the development consent applied for.

3.10.2 The view expressed by the Government during the passage of the Localism Act was that s.114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.

3.10.3 In exercising this power the Secretary of State may wish to take into account the following views of the ExA:

- (1) In the case of the Ferrybridge Multifuel 2 application, there were no changes to the application after submission, so there has been no decision to make concerning the materiality of any changes;
- (2) The Secretary of State might wish to consider whether she is happy with the response times which the DCO seeks to impose upon her in Schedule 7 - see Section 6.4 below.

## **4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES**

### **4.0 MAIN ISSUES IN THE EXAMINATION**

4.0.1 At the start of the examination and within Annex C to the Rule 6 letter that called the Preliminary Meeting [PrD-03], ExA set out his assessment of the principal issues arising from the application, based on the application documents and the relevant representations received during the pre-examination period [RR-01 to RR-25].

4.0.2 The list of issues was not intended to be a comprehensive or exclusive list of all relevant matters, and it was stated that the examination would have regard to all important and relevant matters during the examination and when ExA wrote his recommendation to the Secretary of State after the examination had concluded.

4.0.3 The following were the issues identified at that time:

(a) DCO including:

- Cumulative impacts of Ferrybridge Multifuel 2 power station in tandem with the Ferrybridge Multifuel 1 and the coal-fired power stations
- The requirements including the Construction Environmental Management Plan (CEMP) and Ecological Management Plan (EMP)
- Production, storage and removal of non-hazardous and hazardous waste
- Implementation and monitoring of mitigation measures
- Incorporation of Combined Heat and Power (CHP) readiness and CCR
- Impact on water resources (ground water and surface water) during construction and operation, as well as flood risk
- Parallel tracking of the DCO and the Environmental Permit.

(b) Transport and Traffic:

- Means and effects of transporting construction materials and personnel to site
- Means and effects of transporting power station fuel materials to site and waste materials away from site
- Fuel sources, availability and locations
- Implications for the highway, rail, river and canal network.

(c) Compulsory Acquisition:

- Confirmation that there is no need for compulsory acquisition.

- (d) Visual, Noise, Odour, Emissions/Air Quality, Climate Change, Light and Health Impacts:
- Impacts during the three life cycle phases of the development – construction, operation and decommissioning
  - Impact of the scheme and its design on the local area, countryside, archaeology and local amenity, including on those living near the power station.
- (e) Ecology and Natural Environment:
- Adequacy of baseline assessment and of proposed monitoring
  - Impacts on protected sites, local wildlife and ecology, and proposed mitigation measures
  - Impact on agricultural land and on individual holdings.
- (f) Socio-economic impact:
- Impact on the local and wider economy and the economic development of the area
  - Impact on businesses in the local area.

4.0.4 These issues informed ExA's first questions, issued with the Rule 8 letter on 11 December 2014 [PrD-05].

#### **4.1 ISSUES ARISING FROM WRITTEN SUBMISSIONS**

4.1.1 SoCGs between the Applicant and Natural England (NE), the Civil Aviation Authority (CAA), Highways Agency (HA), English Heritage (EH), Coal Authority (CA), Canal and River Trust (CRT), EA and West Yorkshire Archaeological Advisory Service (WYAAS) were submitted by the Applicant as part of the Application [AD-088 to AD-095, respectively].

##### **DEADLINE 1 (22 JANUARY 2015)**

4.1.2 Comments on relevant representations were received from the Applicant only [AD-08]. This was a point-by-point response from the Applicant to the various points raised by the Interested Parties.

4.1.3 Written representations were received from the EA, National Grid Electricity Transmission (NGET), and CRT [AD-04/05, AD-18 and AD-19, respectively].

4.1.4 Responses to ExA's first written questions were received from WMDC, EA, the Applicant, SDC, NGET and CRT [D1-02, D1-06, D1-11, D1-15, D1-17 and D1-19, respectively].

4.1.5 Local Impact Reports (LIRs) were received from WMDC and SDC/NYCC [D1-01 and D1-16, respectively].

- 4.1.6 Updates were received of the SoCGs between the Applicant and CRT and EA [D1-09 and D1-13, respectively], as were new SoCGs between the Applicant and WMDC and SDC [D1-03/10 and D1-14, respectively].
- 4.1.7 Correspondence between the Applicant and YWT was also received [D1-07].

**DEADLINE 2 (17 FEBRUARY 2015)**

- 4.1.8 The Applicant submitted comments on the relevant representations [D2-01], comments on the LIRs and written representations [D2-02], an updated version of the draft DCO [D2-03/04], comments on responses to ExA's first written questions [D2-06], an update to the Book of Reference (BoR) [D2-07], and an update to the Explanatory Memorandum [D2-08/09].
- 4.1.9 No submissions from any other party were received at Deadline 2.

**DEADLINE 3 (12 MARCH 2015)**

- 4.1.10 With regard to the information identified in the event calendar for Deadline 3, none of the specified submissions were received - i.e. responses to comments on the written representations, responses to comments on the LIRs, comments on the revised draft DCO at Deadline 2, or comments on any other information submitted at Deadline 2.
- 4.1.11 However, the Applicant submitted a number of documents following discussions with Yorkshire Wildlife Trust (YWT) – revisions to the Indicative Landscaping Plan [D3-01/02], Landscape Strategy [D3-04/05], and Biodiversity Strategy [D3-06/07], as well as an update to the Consents and Licences Required [D3-03], and an updated SoCG between the Applicant and WMDC Rev 4.0 [D3-08].
- 4.1.12 The submissions received at Deadlines 1-3 informed ExA's questions for the Issue-Specific Hearing on the draft DCO on 18 March 2015 [HG-005].
- 4.1.13 The main issues at this stage were:
- Private treaties for acquiring all necessary land within the Order limits
  - Status of the Environmental Permit
  - Defence to Proceedings in Respect of Statutory Nuisance (draft DCO Article 18)
  - Procedures for Approvals, etc. (draft DCO Article 19 and Schedule 7)
  - The Authorised Development: definition of Any Other Works (draft DCO Schedule 1)
  - Fuel Type (draft DCO Requirement 3)
  - Design of Fuel Storage Bunker (draft DCO Requirement 5)



- Pre-development Groundwater Table Level Survey (draft DCO Requirement 6)
- Provision of Landscaping (draft DCO Requirement 7)
- Implementation and Maintenance of Landscaping (draft DCO Requirement 8)
- Biodiversity Enhancement and Management Plan (draft DCO Requirement 17)
- CEMP (draft DCO Requirement 18)
- Construction Traffic Routing and Management Plan (draft DCO Requirement 19)
- Construction Hours (draft DCO Requirement 20)
- Control of Noise During Construction (draft DCO Requirement 23)
- Control of Operational Noise (draft DCO Requirement 24)
- Control of Odour Emissions (draft DCO Requirement 25)
- Control of Dust Emissions (draft DCO Requirement 26)
- Control of Smoke Emissions (draft DCO Requirement 27)
- Operational Traffic Routing and Management Plan (draft DCO Requirement 3)
- Travel Plan – Operational Staff (draft DCO Requirement 33)
- Sustainable Fuel Transport Management Plan (draft DCO Requirement 35)
- Air Quality – Emissions Reduction (draft DCO Requirement 37)
- Air Quality Monitoring (draft DCO Requirement 38)
- Decommissioning Costs (draft DCO Requirement 43).

4.1.14 Local residents were concerned about potential noise during construction from FM2 alone, FM2 in combination with FM1 and the existing coal-fired power station, and in combination with existing traffic on the A1(M).

4.1.15 A number of interested parties - WMDC as the Local Planning Authority and EA - cited air quality as a concern [D1-001, D1-004]. This is discussed in Section 4.11 below.

4.1.16 Some interested parties - local residents and the CRT - were keen to see rail and water transport used where possible, especially during operation.

**DEADLINE 4 (02 APRIL 2015)**

4.1.17 The Applicant submitted a final version of the DCO (Rev 3.0) [D4-004/005] and Explanatory Memorandum [D4-02/03], as well as an updated SoCG between itself and WMDC [D4-08].

4.1.18 Resident Mr Elphinstone (on behalf of Mrs Gill), the Applicant, WMDC and resident Mr Willans submitted written summaries of oral cases made at the Open Floor Hearing (17 March 2015) and Issue-Specific Hearing on the draft DCO (18 March 2015) [D4-01, D4-09, D4-10, D4-11, respectively].

## **DEADLINE 5 (17 APRIL 2015)**

- 4.1.19 No submissions were received on the Applicant's revised draft DCO submitted at Deadline 4.
- 4.1.20 The Applicant and WMDC submitted a signed version of the SoCG between them [D5-001/002].
- 4.1.21 The Applicant commented on the submissions at Deadline 4 from WMDC and local resident Mr Elphinstone on behalf of Mrs Gill [D5-003/004].
- 4.1.22 After Deadline 5, the only unresolved issue related to DCO Schedule 7: *Procedure for Approvals* in regard to two of the response times that the Applicant had asked WMDC as the LPA to accept (see also Chapter 6: Draft DCO).
- 4.1.23 Timings with regard to clauses 3(2)(a) and (c) were subsequently agreed and the Applicant asked ExA to make the necessary amendments to the draft DCO before submission to the Secretary of State, which ExA has done in the version of the draft DCO at Appendix A of this report. The Applicant rejected WMDC's proposed 35 business days instead of the Applicant's 18 business days for clause 3(2)(b) on the grounds that 18 business days was a reasonable and achievable period for consultees to notify the planning authority that further information was required in respect of a requirement that they had been consulted upon.
- 4.1.24 This remained a matter that had not been agreed in the SoCG between the Applicant and WMDC [D5-001/002] at the closure of the examination. See discussion in Section 6.4.

## **4.2 ISSUES ARISING IN LOCAL IMPACT REPORTS**

- 4.2.1 Under s.104 of PA2008, the ExA must have regard to any Local Impact Reports (LIR) submitted to the Secretary of State before the deadline set in s.60(2).
- 4.2.2 Two LIRs were received - from WMDC and jointly from SDC/NYCC - at Deadline 1 [D1-001 and D1-016, respectively].
- 4.2.3 The issues raised within them were addressed point by point by the Applicant in its response at Deadline 2 [D2-002]. Issues that were agreed by the Applicant were reflected in the revised draft DCO at Deadline 2 [D2-003/004].
- 4.2.4 Outstanding issues were carried forward through iterations of the SoCG between the Applicant and WMDC [D3-008, D4-008, D5-001/002], culminating in a version that was signed by both parties at Deadline 5 with just one unresolved issue (response timings). A SoCG between the Applicant and SDC was tabled at Deadline 1 [D1-014] and showed no unresolved matters at that point.

## WMDC's Local Impact Report

- 4.2.5 In the conclusion to WMDC's LIR, the Council stated that the need for a Multi-Fuel Power Station of this nature was emphasised in the National Policy Statements and the Council recognised that, in accordance with the Overarching National Policy Statement for Energy (NPS EN-1), the examination of the Proposed Development should start with a presumption in favour of granting consent.
- 4.2.6 WMDC cited its Local Development Framework Core Strategy, policy CS15 *Waste Management*, which "*places great emphasis on avoiding waste production and managing waste produced in the most sustainable way*".
- 4.2.7 WMDC accepted that there was a need for this type of installation to reduce the amount of waste sent to landfill where it could not be recycled or reused, and that the proposal could help to maintain a secure supply of energy into the future and avoid surges in electricity prices.
- 4.2.8 WMDC referred to its Local Development Framework Site Specific Policies Local Plan, SSP1 *Presumption in Favour of Sustainable Development*, but stated that nevertheless the Council recognised that there was still a need to assess the impacts of the proposal and weigh its adverse impacts against its benefits. Through Section 7 of its LIR, the Council provided its assessment on the advantages and disadvantages of the Proposed Development.
- 4.2.9 WMDC stated that the Council's sustainable waste management was "*implemented through the waste hierarchy ... which as set out in Article 7 of the Waste Framework Directive 2008 and the Waste (England and Wales) Regulations 2011, sets out the priorities that must be applied when managing waste ... prevention, preparing for reuse, recycling, **other recovery including energy recovery**, and disposal*".
- 4.2.10 The LIR stated that: "*The Council's adopted Waste Development Plan Document outlines the overall approach to waste management in the district*", and goes on to summarise the policies that underpin the Plan.
- 4.2.11 The Council recorded the Applicant's assessment of the effects/ implications of the multifuel power station in Chapter 16 of its ES, as well as the EA's advice that "*as part of Environmental Permit regime they (EA) will be responsible for determining whether the applicant can demonstrate that operational waste management processes are in place for the efficient use of raw materials and waste recovery*".
- 4.2.12 The Council noted that: "*in advance of an Environmental Permit application being submitted, the EA states that they welcome and support the inclusion of Requirement 41 of the draft DCO relating to Waste Management – Construction and Operational Waste. They consider that the potential impacts of waste management from the*

*project have been considered by the applicant and that regard has been given to the waste hierarchy and designing waste out of the construction phase".*

- 4.2.13 With regard to traffic and transport, WMDC stated in its LIR that it was *"accepted that the traffic associated with both the construction and operational phases of FM2 can be satisfactorily accommodated upon the highway network ... without resulting in capacity or highway safety issues. This is largely due to the highway improvement works associated with the FM1 development "*.
- 4.2.14 With the exception of air emissions, the Council stated that it considered that overall the proposal would have a neutral impact on the Wakefield District. The proposal would provide local jobs during the construction phase and contribute to the local economy as a result, but it would also have a moderate to major adverse impact on nearby residents during construction by way of noise. In addition, there would be a loss of biodiversity on the land as a result of construction but a longer term potential for enhancements.
- 4.2.15 The Council's biggest concern with the proposal related to air emissions of harmful substances associated with the burning of waste for fuel and the potential respiratory and other health impacts that this could have on the population living in the surrounding area.
- 4.2.16 Nonetheless, the Council appreciated that the Applicant needed to apply for a separate Environmental Permit from the EA, that extensive air quality and emissions testing would be undertaken as part of that application process and that the Proposed Development would not be allowed to proceed if the relevant national and international standards and benchmarks were not met.
- 4.2.17 With that in mind, WMDC accepted that most of the main issues had been addressed in the Environmental Statement and supporting documents and that the identified adverse impacts were considered acceptable, or could be made acceptable, through modified or additional Requirements in the DCO (as proposed in the LIR).

#### **SDC/NYCC's Local Impact Report**

- 4.2.18 In the conclusion to SDC/NYCC's LIR, the Councils stated that: *"The site is located entirely within the administrative boundary of Wakefield Metropolitan District Council, albeit close to the Councils' administrative boundaries, so the main impacts will be in relation to the impacts of the construction and operation of the Proposed Development on those residents in the proximity of the power station site".*
- 4.2.19 The Councils go on to state that: *"Clarification was sought from the Applicant on the impact of construction staff vehicles on the local highway network within North Yorkshire. The number of vehicles is below the threshold advised in the DfT Guidance on Transport*

*Assessments where an impact assessment is required. As such it is not considered necessary to contribute to the LIR".*

- 4.2.20 Whilst the Proposed Development would be visible from nearby parts of North Yorkshire, the County Council considered that in this case the primary impacts as well as opportunities for mitigation and landscape enhancement were likely to occur within Wakefield's administrative area. As such the County Council would support in principle any required and appropriate visual impact and enhancement measures that WMDC might seek.

### **SUMMARY OF LIR MATTERS**

- 4.2.21 The main issues raised by WMDC, SDC and NYCC related to air quality and noise. These and other matters arising from the LIRs are considered later in this Chapter (Sections 4.11 and 4.27, respectively).

## **4.3 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES**

- 4.3.1 In WMDC's LIR [D1-001], the Council stated that regard had to be had to the National Planning Policy Framework (NPPF, March 2012), which sets out the Government's general planning policies for England and how these are to be applied. The Council pointed out that paragraph 3 of the NPPF was clear that it did not contain specific policies for NSIPs and these were to be determined in accordance with the decision making framework set out in the PA2008 and relevant NPSs, as well as any other matters that were considered both important and relevant. However, the NPPF confirmed that such 'important and relevant matters' might include the NPPF itself.
- 4.3.2 The Council stated that central to the NPPF was the presumption in favour of sustainable development, as highlighted in Paragraph 14. For decision-making, this meant approving without delay applications that accorded with the Development Plan.
- 4.3.3 The Development Plan specifically designated the Ferrybridge site in the Local Development Framework as a Strategic Development Site as a Power Generation Employment Zone. The proposal therefore had the support in principle of WMDC, subject to the minimisation of negative on and off-site impacts.

## **4.4 CONFORMITY WITH NATIONAL POLICY STATEMENTS, MARINE POLICY STATEMENTS, MARINE PLANS AND OTHER KEY POLICY STATEMENTS**

- 4.4.1 The Proposed Development is defined by s.14 and s.15 of the Planning Act 2008 as a Nationally Significant Infrastructure Project (NSIP), being an electricity generating station with an average gross electrical output in excess of 50 megawatts (MW). Consequently, the application is for a DCO and is made to the Planning Inspectorate on behalf of the Secretary of State for Energy and Climate Change.

4.4.2 As a NSIP, the proposal needs to be considered under policies set out in National Policy Statements and in particular in NPS EN-1, the overarching NPS for Energy.

4.4.3 The proposed FM2 development is a land development and does not need to conform to Marine Policy Statements and Marine Plans.

#### **4.5 ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT**

4.5.1 The Overarching National Policy Statement for Energy, NPS EN-1, Section 4.2 *Environmental Statement* states: "*All proposals for projects that are subject to the European Environmental Impact Assessment Directive must be accompanied by an Environmental Statement (ES) describing the aspects of the environment likely to be significantly affected by the project. The Directive specifically refers to effects on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage, and the interaction between them.*

4.5.2 ... *The IPC should satisfy itself that likely significant effects, including any significant residual effects taking account of any proposed mitigation measures or any adverse effects of those measures, have been adequately assessed*".

4.5.3 The Applicant presented an environmental statement (ES) with its application [AD-043 to AD-087]. This comprised a Non-Technical Summary, a Volume 1 (Main Report), a Volume 2 (Figures for the various chapters), and 18 appendices covering the various topics. The Applicant also presented a range of reports expanding on a number of topics [AD-030 to AD-042].

4.5.4 The topics covered were the assessment methodology, transport and access, air quality, noise and vibration, land use and socio-economics, landscape and visual amenity, water resources and flood risk, ground conditions, ecology, archaeology and cultural heritage, waste and resource management, sustainability, health impact, and cumulative and combined effects. The effects of the Proposed Development on receptors during construction, operation and decommissioning were considered.

4.5.5 The ES was not amended during the course of the examination.

4.5.6 The Applicant has proposed mitigation measures in the ES, identified how these would be included within the design, and where necessary secured and delivered through the draft DCO.

4.5.7 The Applicant has updated the draft DCO as a result of the examination [D2-003/004, D4-004/005].

4.5.8 The various topics summarised above are addressed in subsequent sections of this Chapter.

## 4.6 ENVIRONMENTAL PERMIT

- 4.6.1 NPS EN-1 Section 4.10.5 states that: *"Many projects covered by this NPS will be subject to the Environmental Permitting (EP) regime, which also incorporates operational waste management requirements for certain activities. When a developer applies for an Environmental Permit, the relevant regulator (usually EA but sometimes the local authority) requires that the application demonstrates that processes are in place to meet all relevant EP requirements. Applicants are advised to make early contact with relevant regulators ... to discuss their requirements for environmental permits and other consents.*
- 4.6.2 *The IPC should be satisfied that development consent can be granted taking full account of environmental impacts. The IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted".*
- 4.6.3 The EA will control and regulate the Proposed Development via an Environmental Permit, under the Environmental Permitting (England and Wales) Regulations 2010. For discussion on Air Quality and Pollution, see Section 4.11 below.
- 4.6.4 In Q6.2 of ExA's first questions [PrD-05], ExA asked the Applicant when it intended to submit the Environmental Permit (EP) application to the EA, and asked the EA if it was in a position to provide a timetable for the EP regime such that the determination of the permit would be available in a timely fashion to inform the DCO examination.
- 4.6.5 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it had submitted its EP application on 22/12/2014, and that the EP application would be considered by the EA in parallel with the DCO examination.
- 4.6.6 In EA's submission at Deadline 1 [D1-006], EA stated that it had *"received an environmental permit application from the Applicant for this site on the 23 December 2014 ... we can now commence our assessment of this application ... Given that we have only just received the application ... we will be extremely unlikely to be in a position to provide a detailed view on the environmental permit during the DCO examination ... The absence of an environmental permit does not preclude the Secretary of State from making a Development Consent Order (DCO)".*
- 4.6.7 In the SoCG between the Applicant and the EA [AD-094], EA stated that at this point the EA was not aware of anything that would preclude the granting of an EP.
- 4.6.8 In Agenda Item 22 for the Issue Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the EA if it would be able and willing

to submit an update on the status of the EP application (timescale & whether 'duly made') by Deadline 4.

- 4.6.9 In EA's correspondence prior to the Issue Specific Hearing [CoRR-07, dated 17/03/2015], the EA stated that *"We can now confirm that ... the 'Duly Made' date for the environmental permit application is confirmed as 14th January 2015. Work has now commenced on the determination of the permit ... This stage in our assessment process is estimated to take until the end of July 2015. The outcome of this stage will be a decision as to whether we are minded to grant a permit or not"*.
- 4.6.10 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the latest information from the EA was that a decision on the EP application was likely earlier than initially thought. According to the Applicant, the EA had confirmed that the Environmental Permit application was of a 'high quality'.
- 4.6.11 No further submission was received from the EA at Deadline 4, and no submissions were received from the Applicant or EA at Deadline 5. The position at the close of the examination is therefore as stated above. ExA is satisfied that the emissions can be adequately regulated through the Environmental Permit and is not aware of any reasons why the permit would not be granted.

## **4.7 GOOD DESIGN**

- 4.7.1 PA2008 Section 10 *Sustainable Development* states that in setting policy for NSIPs the Secretary of State must have regard to the desirability of achieving 'good design'.
- 4.7.2 NPS EN-1 Section 4.5 *Criteria for "Good Design" for Energy Infrastructure*, states that the ExA (formerly IPC) *"needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable (including taking account of natural hazards such as flooding) as they can be. In so doing, the IPC (ExA) should satisfy itself that the Applicant has taken into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible"*.
- 4.7.3 The Applicant's document *Design and Access Statement* [AD-036] sets out how the Applicant has had regard to "good design" in designing the Proposed Development.
- 4.7.4 The Applicant states that: *"... the broad approach that has been taken to the design of the Proposed Development has been to take design references from its surroundings, notably FM1. The Applicant has, however, sought to explore how the scale and massing of components of the Proposed Development could potentially be reduced, while the*



*decisions with regard to its siting and layout have also been aimed at minimising its visual impacts where possible.*

- 4.7.5 The Applicant stated that the final design of the Proposed Development was functional, reflecting its purpose to generate electricity and the industrial context within which it would sit. In terms of siting and layout, opportunities had been taken to minimise the visual impact of the development by locating it close to the existing buildings and structures at the Power Station site, while in terms of its form, scale and appearance it would broadly reflect FM1. The areas around the main process area would be landscaped, enhancing their biodiversity and appropriate access routes and arrangements would be provided.
- 4.7.6 The Applicant concluded that: *"The Proposed Development will incorporate a number of sustainability measures within its design and will be both resilient to the effects of climate change, while making a positive contribution toward combating these"*.
- 4.7.7 Interested Parties made no comment on the Proposed Development in terms of good design, although specific features of the design were raised under Landscape and Visual Impact. See Section 4.26 where these issues are discussed.
- 4.7.8 ExA's view is that the design of FM2 broadly follows the design of FM1, it will be situated alongside FM1, and it will be configured consistently with FM1, thus mitigating any additional negative visual impact. They both build on designs used by the Applicant and others elsewhere. The enhanced local road network installed for FM1 will also be available for FM2.
- 4.7.9 ExA is of the view that the proposed FM2 development conforms with the requirements for good design, in that it is sustainable, as well as being attractive, durable and adaptable. While the term "attractive" is subjective, the form of the structure has been made sympathetic to the existing structures.

## **4.8 COMBINED HEAT AND POWER**

- 4.8.1 NPS EN-1 Section 4.6 *Consideration of Combined Heat and Power* states: *"Under guidelines issued by DECC (then DTI) in 2006, any application to develop a thermal generating station under Section 36 of the Electricity Act 1989 must either include CHP or contain evidence that the possibilities for CHP have been fully explored to inform the IPC's consideration of the application ... The same principle applies to any thermal power station which is the subject of an application for development consent under the Planning Act 2008"*.
- 4.8.2 The Applicant's document *Combined Heat and Power Assessment* [AD-038] states: *"This CHP assessment demonstrates that the Proposed Development meets the BAT (Best Available Technology) tests outlined in the EA CHP Guidance and it therefore will be designed and*

*built as 'CHP Ready' to supply any identified viable heat load of up to 20 MWth to allow for the future implementation of CHP should the heat loads become economically viable".*

- 4.8.3 WMDC in its LIR states that: *"A Combined Heat and Power Assessment (dated July 2014) has been submitted, which concludes that there are currently no economically viable options available. However, CHP requirements are covered by the Environmental Permitting regime and the EA has confirmed that they will require all new combustion power plants to be CHP-ready to a sufficient degree dictated by the likely future technically-viable opportunities for heat supply in the vicinity of the plant ... The EA consider that the submitted CHP Assessment adequately determines the CHP Ready status of the plant and welcomes the inclusion of Requirement 39 (now Req 40) of the draft DCO which secures the space and routes for the provision of CHP for the lifetime of the development".*
- 4.8.4 The draft DCO at Deadline 4 [D4-004/005] Requirement 40: *Combined Heat and Power* secures the fact that the authorised development may not be brought into commercial use until the planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems. The undertaker must maintain such space and routes for the lifetime of the authorised development.
- 4.8.5 Twelve months after the authorised development is first brought into commercial use, the undertaker must submit to the planning authority for its approval a CHP review updating the CHP assessment. The undertaker must consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission, and include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.
- 4.8.6 ExA is satisfied that Requirement 40 adequately provides for CHP to be implemented in the future if it should become viable. CHP will also be examined further during the application for the Environmental Permit.

## **4.9 GRID CONNECTION**

### **GRID CONNECTION OPTIONS**

- 4.9.1 NPS EN-1 Section 4.9 Grid Connection states that: *"It is for the Applicant to ensure that there will be necessary infrastructure and capacity within an existing or planned transmission or distribution network to accommodate the electricity generated. The Applicant will liaise with National Grid who own and manage the transmission*

*network in England and Wales or the relevant regional Distribution Network Operator (DNO) to secure a grid connection".*

- 4.9.2 The NPS recognises that the Applicant may not have received or accepted a formal offer of a grid connection from the relevant network operator at the time of the application, but it goes on to state that the Secretary of State will want to be satisfied that there is no obvious reason why a grid connection would not be possible.
- 4.9.3 In the ES [AD-044] Chapter 3 *The Proposed Development*, Section 3.6 *Supporting Facilities*, Sub-Section 3.6.21 *Grid Connections*, the Applicant states: *"The Proposed Development will require a connection to export electricity to the transmission grid or the distribution network, owned and operated by National Grid (NG) and Northern Power Grid (NPG) respectively. Early discussions have indicated three possible options ... It is not possible to select a single option at this stage as feasibility work is ongoing. The Grid Connection Statement (Application Document Ref. No. 5.5) sets out the current status of works"*.
- 4.9.4 The Applicant's document Grid Connection Statement [AD-033] confirms this position and states *"the need for further evaluation of the options by the Applicant and relevant transmission and distribution operators. Therefore, all three options have been included within the Application. It is anticipated that a decision on which option to select will be made at the detailed design stage, after any DCO for the Proposed Development has been granted"*.
- 4.9.5 The Applicant goes on to state that: *"All land required for the three options lies within the Order Limits and is within the control of the Applicant apart from the final connection point into the third party operated sub-station infrastructure ... Other than known infrastructure and potential unknown ground conditions and obstructions along the route of the cable, which would be identified at the time of construction, there are no other environmental constraints that have been identified"*.
- 4.9.6 The draft DCO at Deadline 4 [D4-004] Schedule 1: *Authorised Development*, identifies Work No. 2 – a connection to the electricity grid network, including, where required, modification works to existing grid connection infrastructure consisting of one only of options 2A, 2B or 2C.

#### **PROTECTIVE PROVISIONS AND PRIVATE TREATIES**

- 4.9.7 In National Grid Electricity Transmission (NGET)'s Relevant Representation [RR-02], NGET stated in respect of existing NGET infrastructure, that NGET would require protective provisions to be included within the DCO to ensure that apparatus was adequately protected and to include compliance with relevant safety standards.
- 4.9.8 In Agenda Item 23 of the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked NGET to state the position on

protective provisions in the draft DCO, and the Applicant and NGET to state their positions on a possible private treaty agreement.

- 4.9.9 In the Applicant's submission at Deadline 4, the Applicant stated that NGET had confirmed in its written response to this Agenda Item (dated 16 March 2015) that negotiations with the Applicant had reached a satisfactory conclusion and that its interests and apparatus were adequately protected by existing private treaty rights. Accordingly, NGET required no further protection by way of protective provisions or commercial agreement. NGET made no submission at Deadline 4.

#### **SUMMARY OF CONNECTION ISSUES**

- 4.9.10 The Applicant has stated that it has not been possible to select a single grid connection option in advance of the submission of the Application, due to the need for further evaluation of the options by the Applicant and relevant transmission and distribution operators. All three grid connection options are therefore specified in the draft DCO. The ES has assessed the effects from the three proposed grid connection options, and has concluded no likely significant effects on receptors.
- 4.9.11 In accordance with NPS EN-1 Section 4.9, ExA is satisfied that there are no obvious reasons why the necessary approvals for achieving a grid connection are likely to be refused.

#### **4.10 CARBON CAPTURE AND STORAGE / CARBON CAPTURE READINESS**

- 4.10.1 NPS EN-1 Section 4.7 *Carbon Capture and Storage and Carbon Capture Readiness* states that: "*All commercial scale fossil fuelled generating stations have to be carbon capture ready ... Operators of fossil fuel generating stations will also be required to comply with any Emission Performance Standards (EPS) that might be applicable*".
- 4.10.2 However, the NPS requirement is expressed in terms of coal-fired power stations of capacity greater than 300MW.
- 4.10.3 Since the Proposed Development will lead to a power station with a maximum capacity of 90MW, there is therefore no requirement on the Applicant to consider carbon capture and storage.

#### **4.11 AIR QUALITY AND EMISSIONS**

- 4.11.1 NPS EN-1 Section 5.2 *Air Quality and Emissions* states: "*Where the project is likely to have adverse effects on air quality the Applicant should undertake an assessment of the impacts of the proposed project as part of the Environmental Statement (ES). The ES should describe any significant air emissions, their mitigation and any residual effects ... the predicted absolute emission levels of the proposed*

*project after mitigation methods have been applied, existing air quality levels and the relative change in air quality from existing levels, and any potential eutrophication impacts".*

- 4.11.2 The Applicant has considered Air Quality and Emissions in its ES [AD-043/044] Chapter 8 *Air Quality*, together with Appendix 8A *Air Quality Assessment* [AD-072]. The construction, operation and decommissioning phases have all been assessed. The assessment considers:
- the existing baseline excluding FM1 in operation
  - the future (modified) baseline against which the Proposed Development impacts are assessed, including process emissions from operation of the adjacent FM1 plant and associated traffic pollutant contributions
  - the impacts from construction of the Proposed Development, currently anticipated to commence in 2015, with respect to associated construction traffic, on-site plant emissions and construction dust
  - the impacts from operational process emissions and road traffic emissions associated with the Proposed Development in the opening year anticipated to be 2018.
- 4.11.3 The Applicant states in its ES Non-Technical Summary [AD-043]: *"The air quality assessment has considered potential impacts up to 10 km from the Proposed Development (the study area) on both human and ecological receptors including residential properties, schools, Sites of Special Scientific Interest, Local Nature Reserves and Local Wildlife Sites ... There are no internationally designated (European) ecological sites within the study area ... The Site is located within the M62 Air Quality Management Area that was declared due to higher levels of nitrogen dioxide (NO<sub>2</sub>) in the air (close to European air quality standards), largely from traffic sources ... The Site is also close to the Castleford Air Quality Management Area, also designated for the same reason".*
- 4.11.4 With regard to dispersion modelling, the Applicant states that: *"The assessment used computer models to predict the dispersion of air emissions from the construction and operation of the Proposed Development including anticipated emissions from the new stack and traffic emissions associated with the Proposed Development. Effects during the decommissioning phase are anticipated to be similar to the construction phase".*
- 4.11.5 The Applicant also notes that: *"... the combined impacts of FM1 and the Proposed Development have been assessed by determining a modified air quality baseline from FM1 traffic and stack emissions, on to which the predicted impacts of the Proposed Development emissions have been added".*
- 4.11.6 The Applicant concludes in its ES Non-Technical Summary that: *"There would be no significant effects arising from air quality changes as a*

*result of the Proposed Development through the use of embedded mitigation".*

### **Potential Impacts Arising from Emissions and Air Pollution**

- 4.11.7 In Q6.20 of the ExA's first questions [PrD-05], ExA asked the Applicant to explain how it had identified and assessed the potential impacts arising from emissions and air pollution generated during both the construction and operational phases. ExA also asked what mitigation measures were relied upon to reduce the significance level of impacts, where these measures had been assessed within the ES, and how these measures would be secured in the draft DCO.
- 4.11.8 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that embedded mitigation measures had been considered as follows:
- compliance with the Environmental Permit and Industrial Emissions Directive. For discussion on the Environmental Permit, see Section 4.6 above
  - compliance with a tighter Emission Limit Value for nitrogen oxide emissions from the stack, secured by draft Requirement 36 (now 37)
  - restricting the fuel delivery fleet to achieving the Euro VI engine performance standard, again secured by draft Requirement 36 (now 37)
  - use of an approved CEMP to control emissions during construction, secured by draft Requirement No. 18
  - use of a minimum stack height, secured by Article 5(4)(a) of the draft DCO.
- 4.11.9 The Applicant stated that measures had been presented to, discussed and agreed with, the WMDC environmental health department.

### **Emission Levels**

- 4.11.10 In the Applicant's first draft DCO [AD-006], Requirement 37 (then 36) required the daily average emission limit value for nitrogen monoxide and nitrogen dioxide, expressed as nitrogen dioxide, to be exactly 180 mg/Nm<sup>3</sup>. The Explanatory Memorandum [AD-007] stated that this was a maximum value. The use of the words "*daily average emission limit value*" in the requirement was not precise and Requirement 37 would not be enforceable as a result.
- 4.11.11 In Q2.10 and Q6.31 of the ExA's first questions [PrD-05], ExA asked the Applicant:
- (i) to clarify whether the values presented in Table 8.7 of the ES [AD-044] corresponded to the maximum allowances of the Waste Incineration Directive
  - (ii) to consider replacing the words "*daily average emission limit value for*" with the word "*maximum*", insert the words "*no more than*" before 180mg/Nm<sup>3</sup>, and thereafter insert the words

"calculated between 00:00 and 23:59 on any day"; or similar wording to make the requirement precise and enforceable  
(iii) to state how the daily emissions would be monitored and controlled through the DCO and Environmental Permit.

- 4.11.12 In the Applicant's response at Deadline 1 [D1-011], the Applicant responded to point (1) by stating that as presented in paragraph 8.3.32 of the ES, the Emission Limit Values were based on the maximum allowable values specified in the Industrial Emissions Directive (IED) for waste incineration plant with the exception of emissions of nitrogen oxides. Due to the location of the site in an Air Quality Measurement Area (AQMA), the Applicant had committed through draft Requirement 37 to the plant achieving a tighter Emission Limit Value for emissions of nitrogen oxides than was specified in the IED.
- 4.11.13 In the EA's response [D1-006] to ExA's questions [PrD-05], EA stated that: *"When assessing the application for a permit to operate the facility we will set conditions to ensure that emissions to air and discharges to water, land and groundwater along with odour, noise and vibration are at a level that will not result in significant impact on people and the environment, reflecting current statutory requirements and to ensure compliance with European Directive 2010/75/EU on Industrial Emissions. We cannot grant a permit until we are satisfied that the facility can be operated without causing significant pollution to the environment or harm to human health"*. EA did not comment on how the Applicant's emissions commitment would relate to what might be imposed in the Environmental Permit.
- 4.11.14 With regard to point (2), the Applicant proposed amended wording for Requirement 37, which it claimed was precise and enforceable. It stated that these words had been included in the draft DCO at Deadline 2, and the matter was thereby resolved.
- 4.11.15 With regard to point (3), the Applicant stated that monitoring would be done continuously through the conditions of the Environmental Permit.
- 4.11.16 ExA is satisfied with these responses

### **Cumulative and Combined Effects**

- 4.11.17 In Q6.13 of the ExA's first questions [PrD-05], ExA noted the Applicant's statement in the ES [AD-044] Chapter 19: *Cumulative and Combined Effects* that given the scale of the proposed waste management facility and Advanced Thermal Treatment plant, the prevailing wind direction [which was not in the direction of the former ARBRE (Association of Resources for Biophysical Research in Europe, Biomass Renewable Energy facility) from the Proposed Development], the lack of shared transport links and the distance from the Proposed Development Site, it was considered that there was no potential for cumulative impacts relating to air quality, noise, landscape and visual

amenity or transport. ExA asked SDC and the EA for their views on this statement by the Applicant.

4.11.18 In SDC's submission at Deadline 1 [D1-015], SDC stated that consideration had been given to the air quality assessment presented for a 2012 application by Drenl Ltd (a recycling and renewable energy company) in respect of emissions to air, and SDC would agree that - as the maximum predicted effects of this application would occur within 1 km of the stack - this issue did not require further consideration.

4.11.19 In EA's submission at Deadline 1 [D1-006], EA stated that the Applicant's assessment of the cumulative and combined effects of the proposed facility would be considered by EA through the determination of the Environmental Permit application.

### **Operation of Diesel Generators**

4.11.20 In the ExA's Agenda Item 17 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to clarify the meaning of the statement "*assuming the diesel generators operate all year round*" (ref. Applicant's response to ExA's questions at Deadline 1 [D1-011]).

4.11.21 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the statement "*...assuming the diesel generators operate all year round...*" was made to account for the way the dispersion modelling was undertaken and not the actual operation of the generators. In the dispersion modelling, the generators were simulated as running for the whole year to account for different meteorological conditions within that year, so that the peak short term impacts could be understood. Their actual operation would be restricted to a total of 100 hours per year, as their purpose is to enable the safe shut-down of the plant in the event of a total power failure.

### **FM2 and FM1 Construction Timings**

4.11.22 In Q6.21 of the ExA's first questions [PrD-05], ExA asked the Applicant to confirm its confidence that the assumption in Chapter 8 of the ES [AD-044] that the existing baseline (represented by a 2011 baseline that excluded FM1 construction effects which would not be present during construction / operation of FM2) was still valid and that FM1 construction / FM2 construction would not overlap.

4.11.23 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that FM1 was due to be commissioned in Summer 2015, and the earliest date for the FM2 DCO to be approved by the Secretary of State would be December 2015. *Note: given the fact that the examination was closed on 29 April 2015, earlier than 04 June 2015 as required by the statutory maximum of six months for the examination period, the Secretary of State's decision should be made by 29 October 2015, but this does not affect the response to ExA's question.*



## **Use of FM1 Air Quality Monitoring Information**

- 4.11.24 In Q6.23 of the ExA's first questions [PrD-05], ExA noted that there was no reference to any ongoing construction air quality / dust management monitoring that may have been required as part of the FM1 consent being fed into the presentation of baseline data and the impact assessment of the proposed FM2 development. ExA asked the Applicant to clarify whether any such monitoring had been undertaken for FM1, if so whether this information could be provided, and where this information is available, whether the Applicant had used this data to verify the air quality assessment predictions undertaken for FM2.
- 4.11.25 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that no on-going construction dust monitoring was undertaken for FM1. It had been accepted that the distance over which construction air quality effects could occur is 200m, and there were no identified receptors within 200m of the main construction site for FM1. Draft Requirement 37 (now 38) would secure a similar monitoring programme for the FM2 development as for FM1.
- 4.11.26 In the ExA's Agenda Item 12 at the Issue-Specific Hearing on the DCO 18 March 2015 [HG-005], ExA asked Public Health England [(PHE), Centre for Radiation, Chemicals & Environmental Hazards] to comment on the Human Health Risk Assessment of the Proposed Development. ExA also asked the Applicant to state its position on the SDC request to align Requirement 37 with the requirement for FM1, and whether the information gained from the monitoring could be used as the basis for a medical study on the health impacts.
- 4.11.27 In the ExA's Agenda Item 18 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to clarify whether the additional background monitoring data started for FM1 had been, or would be, used for the FM2 assessment, and ExA asked WMDC and SDC to confirm their agreement to the modified baseline and the wording of Requirement 37 (now 38) in the draft DCO at Deadline 2 [D2-003/004] with regard to bringing Requirement 37 more in line with FM1 conditions.
- 4.11.28 No submission was received from PHE at Deadline 4 (or any other deadline).
- 4.11.29 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that it had now drafted Requirement 38 (formerly 37) to be consistent with the wording of FM1 planning conditions 68 and 69. For FM1, the analysis of metals had been agreed under the scheme submitted for approval to discharge the planning conditions and a similar approach was proposed in relation to the FM2 Proposed Development. In terms of using the data as a basis for medical study, the Applicant referred SDC to the published position of PHE which stated that "*well run and regulated modern municipal waste incinerators are not a significant risk to public health*". In addition, the Applicant understood that PHE had reaffirmed its intention to publish

in 2015 a study looking at the potential health impacts from waste incineration.

- 4.11.30 The Applicant further stated that the FM1 monitoring data had not been used for the assessment of the Proposed Development as it was not available at that time. The results of the first year of background monitoring had been completed in November 2014 and the report of those results had been published in February 2015. The Applicant stated that results showed that the Brotherton baseline air quality was not compromised and was consistent with the assumptions used in the air quality impact assessment for the Proposed Development. Use of the modified baseline had been discussed and agreed with the WMDC Scientific Officer prior to submission of the Application.

### **Assumptions for Construction Traffic**

- 4.11.31 In Q6.25 of the ExA's first questions [PrD-05], ExA asked the Applicant to clarify how the assumptions for the construction traffic data in the ES [AD-044] Chapter 8 corresponded to the relevant evaluation criteria in immediately excluding the need for further assessment (i.e. worst case potential increases along roads within the study area compared to the threshold criteria for assessment).
- 4.11.32 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the Design Manual for Roads and Bridges (DMRB) presented assessment thresholds for changes to, or increases in, traffic on roads, whereby traffic increases below those thresholds are accepted not to give rise to unacceptable air quality effects. Other similar thresholds existed in guidance published by Environmental Protection UK (EPUK) and these had also been considered. In the DMRB guidance, changes in traffic of more than 1,000 AADT (Annual Average Daily Traffic Flow) were to be considered further by quantitative assessment. For changes in traffic below this criterion, significant changes in air quality were not expected and no quantitative assessment was required. A review of changes in road traffic vehicle trips for the routes around the site indicated that none of the DMRB or EPUK screening criteria were anticipated to be exceeded during construction (e.g. through the expected number of additional HGV deliveries). Therefore, no further quantitative assessment works had been undertaken for construction road vehicles.

### **Justification for the Absence of Background Monitoring Data**

- 4.11.33 In Q6.22 of the ExA's first questions [PrD-05], ExA asked the Applicant to provide further justification as to the absence of background monitoring data.
- 4.11.34 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that substantial air monitoring and evaluation had been performed by and for WMDC in relation to the AQMA which was used for the assessment. Continuous monitoring of a suite of pollutants had commenced pursuant to a planning condition attached to the FM1

consent and data from that monitoring had started to become available to further characterise the local environment. The Applicant had wanted to avoid the inclusion of any potential contribution from FM1 construction in baseline data since this would have led to an unnecessarily pessimistic assessment of potential impact (hence the modified baseline). FM1 is due to be commissioned in September 2015, while the Secretary of State's decision on the FM2 DCO is not expected to be until the end of October 2015, with construction potentially starting in 2016.

- 4.11.35 No submissions on air quality were received at Deadlines 4 or 5 from any Interested Party - notably WMDC, SDC or PHE - and no outstanding areas of disagreement are present with regard to air quality in the SoCG between the Applicant and WMDC [D5-001/002].
- 4.11.36 Revised wording for draft DCO Requirement 37 *Air Quality Emissions Reduction* and Requirement 38 *Air Quality Monitoring* has been included in the draft DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004/005].
- 4.11.37 ExA is satisfied that air quality will be sufficiently controlled by the embedded mitigation measures in the design, Requirements 37 and 38 in the draft DCO (Appendix A to this report), and the measures in the Environmental Permit, the application for which is currently being considered by the EA.

#### **4.12 BIODIVERSITY, BIOLOGICAL ENVIRONMENT AND ECOLOGY CONSERVATION**

- 4.12.1 NPS EN-1 Section 5.3 states: *"Where the development is subject to EIA the Applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.*
- 4.12.2 *As a general principle ... development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives.*
- 4.12.3 *The IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment".*
- 4.12.4 The Applicant has considered ecology in its ES [AD-043/044] Chapter 14 *Ecology*, together with Appendix 14A *Ecology Desk Study Records*.

The construction, operation and decommissioning phases have all been assessed. The assessment considers:

- Ecological receptors over a 5 km radius
- Air emissions during operations over a 10 km radius
- Statutory and non-statutory designated nature conservation sites
- Internationally and nationally designated sites
- European and nationally protected species.

- 4.12.5 The Applicant states in its ES Non-Technical Summary [AD-043]: *"Ecological receptors have been identified within a 5 km study area of the Proposed Development (10 km for the potential effects of emissions to air from the operational Proposed Development) through a desk based study, and a Phase 1 Habitat Survey has been undertaken for the Site and its immediate surroundings. Within the 5 km study area, five statutory and 19 non-statutory designated nature conservation sites have been identified. In addition, the habitat survey indicated that the wider Ferrybridge Power Station site holds very little value for wildlife. Ecological receptors of note in the Site vicinity are the River Aire, Fryston Beck, a pond within the former golf course and woodland habitat, although none of these sites are internationally or nationally designated. There are no internationally designated sites within 20 km of the Site and Natural England has confirmed that there are no potential effects on internationally designated sites"*.
- 4.12.6 The Applicant concludes that: *"As a result of the design of the Proposed Development which includes a replacement pond and Landscape and Biodiversity Strategies, no significant adverse effects on ecological receptors are predicted as a result of construction and operation"*.
- 4.12.7 In the Applicant's *Biodiversity Strategy* [AD-042], the Applicant stated the conservation objectives.
- 4.12.8 In addition, some of the habitats and European and UK protected species met the requirements of the Natural Environment and Rural Communities (NERC) Act 2006 Section 41 habitats and Wakefield Biodiversity Action Plan (BAP).
- 4.12.9 The proposed mitigation and enhancement comprises the creation of a habitat mosaic within the Proposed Development Site. This encompasses the provision of a new pond, broad-leaved woodland stands, scattered scrub and unimproved grassland. There would also be areas of wildflower planting. These habitats would be managed for conservation purposes and would be further enhanced post development through appropriate management.
- 4.12.10 The proposed mitigation was considered by the Applicant to be sufficient to alleviate what the Applicant regarded as the small loss in biodiversity as a result of the Proposed Development and would further enhance the site as a whole in accordance with relevant national and local planning policy.

- 4.12.11 The ExA concurs with this position. The small loss of biodiversity relates to an existing pond on the former golf course, and the mitigation measures include the establishment of a replacement pond.

### **Natural England**

- 4.12.12 In its Relevant Representation [RR-11], NE stated that: *"The following European protected species may be affected by the proposed project: bats. The following nationally protected species may be affected by the proposed project: nesting birds, common frog, common toad, and smooth newt"*.
- 4.12.13 NE further stated that it had: *"no objection to the project for the following reasons. There are no European sites, Ramsar sites or nationally designated landscapes located within the vicinity of the project that could be significantly affected. NE is satisfied that the project is unlikely to have a significant impact on the nearby Fairburn & Newton Ings Site of Special Scientific Interest"*.
- 4.12.14 *"The project site currently supports habitats of negligible ecological interest and all issues relating to protected species (including any licensing requirements under the Habitats Regulations or the 1981 Act) have already been addressed"*.
- 4.12.15 NE further stated that it *"welcomes the ecological enhancement measures set out in Section 14 of the Environmental Statement [AD-044] and in the Biodiversity Strategy [AD-042], which would have a positive effect on the natural environment by providing a range of biodiverse habitats on the site. This is in accordance with the principles set out in paragraph 118 of the National Planning Policy Framework. Natural England notes that this commitment is reflected in Requirement 17 (Biodiversity Enhancement and Management Plan) of the draft DCO"*.
- 4.12.16 The signed SoCG between the Applicant and NE [AD-088] stated that there were no matters not agreed between the two parties.

### **Yorkshire Wildlife Trust**

- 4.12.17 In YWT's Relevant Representation [RR-22], YWT stated that it had made comments on:
- Ecological enhancement of the site
  - Nitrogen effects on Fairburn and Newton Ings SSSI
  - Climate change and carbon emission calculations
  - Cumulative effects.
- 4.12.18 YWT had expressed concerns in all of these areas and had challenged data presented in the application.
- 4.12.19 In Q6.54 of the ExA's first questions [PrD-05], ExA asked the Applicant for its position with regard to the points raised by YWT, and the Applicant and YWT to prepare a SoCG in response to the issues

raised in YWT's relevant representation and any other relevant matters

- 4.12.20 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the issues raised by YWT in its Relevant Representation had been discussed and the agreement reached between the Applicant and the YWT had been outlined in the minutes of the meeting held between the Applicant and the YWT on 18 December 2014 [D1-007].
- 4.12.21 The Applicant stated that, in respect of nitrogen deposition, the meeting minutes recorded that a SoCG had been signed with NE that there were no significant effects, which were being mitigated through the use of an appropriate stack height and a tighter emission limit value than required under the Industrial Emissions Directive.
- 4.12.22 According to the Applicant, its summary of the meeting was: *"It was agreed that subject to the amendment of the landscaping and biodiversity strategies and the commitment to engage with YWT during the finalisation of any detailed landscaping scheme, the comments made in the YWT representation have been addressed to the satisfaction of both parties and no further actions are required."*
- 4.12.23 In ExA's Agenda Item 8 at the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the Applicant and YWT to state their current positions with regard to the meeting Applicant/YWT on 18 December 2014 and Requirement 17 *Biodiversity Enhancement and Management Plan*, and ExA asked YWT and NE to state whether they wished to be included as consultees of the Biodiversity Enhancement and Management Plan in the wording of Requirement 17.
- 4.12.24 In the Applicant's submission at Deadline 4 [D4-009], the Applicant confirmed the agreement with YWT as documented in the minutes of the meeting held on 18 December 2014 and submitted at Deadline 1 [D1-007]. The Biodiversity and Landscaping Strategies and Landscaping Plan (submitted with the Application) had been updated to take account of the YWT's recommendations in relation to the inclusion of magnesian grassland within the biodiversity proposals. The updated documents had been submitted at Deadline 3 [D3-001/002/004/005/006/007]. The Applicant had no objection to the YWT being a consultee for the purposes of Requirement 17 and this had been incorporated into the revised draft DCO at Deadline 4 [D4-004/005].
- 4.12.25 In its written response dated 17 March 2015 [CoRR-10] to ExA's Agenda Item 8 for the Issue Specific Hearing on the DCO, YWT had confirmed that it would wish to be consulted on the Biodiversity Enhancement and Management Plan submitted to the planning authority pursuant to Requirement 17. NE in its written response dated 13 March 2015 [CoRR-08] to the same Agenda Item confirmed that it would not wish to be consulted in respect of Requirement 17.

## **Securing the ecological mitigation through the DCO**

- 4.12.26 A number of requirements have been included in the draft DCO, to ensure that matters relating to habitats must be addressed if they are discovered during the construction of the FM2 project. Requirements are also in place with regard to broader ecological and biodiversity considerations.
- 4.12.27 Draft DCO Requirement 18 *CEMP* secures the fact that the CEMP as submitted and approved must include measures for the protection of any protected species found to be present on the Order land during construction, as well as including the mitigation measures included in Chapter 9 of the ES [AD-044].
- 4.12.28 Requirement 7 *Provision of Landscaping* secures the fact that the landscaping schemes as submitted and approved must be in accordance with the Landscaping Plan, Biodiversity Strategy and Biodiversity Enhancement and Management Plan.
- 4.12.29 Requirement 17 *Biodiversity Enhancement and Management Plan* secures the development of an approved Biodiversity Enhancement and Management Plan.
- 4.12.30 Requirement 31 *Restoration of Land used Temporarily for Construction* secures the fact that land used for construction must be restored in accordance with the Biodiversity Enhancement and Management Plan.
- 4.12.31 Engagements between the Applicant, NE and the YWT before and during the examination led to NE and YWT being content with the measures proposed in the draft DCO at Deadline 4 [D4-004/005], and in particular the requirements that would secure what they regarded as necessary.
- 4.12.32 These requirements were revised by the Applicant in updated drafts of the DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004].
- 4.12.33 ExA is satisfied that the mitigation measures embedded in the design and those secured through the DCO requirements identified above will provide the necessary controls with regard to biodiversity, biological environment, and ecology.
- 4.12.34 ExA is satisfied that based on NE's representations, a European Protected Species licence under the Habitats Regulation is not required for the Proposed Development.
- 4.12.35 Effects on European site under the Habitats Regulations are considered in Section 4.35 below.

## **4.13 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS**

- 4.13.1 NPS EN-1 Section 5.4 states: "*Where the Proposed Development may have an effect on civil or military aviation and/or other defence assets*

*an assessment of potential effects should be set out in the ES ... The Applicant should consult the MoD (Ministry of Defence), CAA (Civil Aviation Authority), NATS (National Air Traffic Service) and any aerodrome – licensed or otherwise – likely to be affected by the Proposed Development in preparing an assessment of the proposal on aviation or other defence interests ...*

- 4.13.2 *The IPC should be satisfied that the effects on civil and military aerodromes, aviation technical sites and other defence assets have been addressed by the Applicant and that any necessary assessment of the proposal on aviation or defence interests has been carried out".*
- 4.13.3 The Applicant tabled a SoCG between the Applicant and the CAA [AD-089] with its application. With regard to military interests, the SoCG referred to consultation with the Defence Infrastructure Organisation in which the latter had stated that the application site lay outside any MoD safeguarding areas, and that as such MoD had no safeguarding objections to the Proposed Development.
- 4.13.4 The Applicant's first draft DCO [AD-006] included Requirements 44 *Aviation Warning Lighting* and 45 *Air Safety*. No changes were made to these requirements during the examination.
- 4.13.5 In Q7.2 of the ExA's first questions [PrD-05], ExA asked the CAA and the Applicant to confirm the position stated in the SoCG.
- 4.13.6 In the Applicant's submission at Deadline 1, the Applicant stated that the SoCG with the CAA remained agreed and as far as the Applicant was aware there were no matters that would need to be addressed during the examination. It was not therefore considered that the SoCG needed to be updated.
- 4.13.7 The CAA made no submission at Deadline 1 (or Deadlines 2-5).
- 4.13.8 There was no change in the relevant Requirements 44 and 45, and ExA is satisfied that they provide adequate mitigation.

#### **4.14 CLIMATE CHANGE MITIGATION**

- 4.14.1 NPS EN-1 Section 4.8 Climate Change Adaptation states: *"The IPC should be satisfied that Applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections available at the time the ES was prepared to ensure they have identified appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure"*.
- 4.14.2 The NPSs state that there is an urgent need for new electricity generating capacity in the UK, particularly low carbon and renewable forms of energy, including Energy from Waste (EfW) generating stations to enhance security and diversity of supply, support the



transition to a low carbon economy and enable the Government to meet its climate change commitments.

- 4.14.3 The Applicant states in its ES Non-Technical Summary [AD-043] Section 1.3: *"The Proposed Development will make a positive contribution towards addressing a number of challenges. These include the UK Government's climate change commitments, security of national electricity supply, and positive use of waste materials"*.
- 4.14.4 The Applicant deals with climate change and waste policy in its *Planning Statement* [AD-035] and its *Fuel Availability and Waste Hierarchy and Plans Compliance Assessment* [AD-037].
- 4.14.5 In its *Planning Statement*, the Applicant states: *"The use of Waste Derived Fuel (WDF) to generate electricity will deliver very substantial carbon savings making a positive contribution toward the Government's ambitious and legally binding climate change commitment of a reducing greenhouse gas emissions by 80% (compared to 1990 levels) by 2050. The carbon savings will not only be in terms of reduced reliance on more polluting fossil fuel generation, but also the savings that will result from diverting waste from landfill, where the waste breaks down and generates greenhouses gases, principally methane"*.
- 4.14.6 As an EfW generating station, the Proposed Development will respond to the policy stated in the NPSs, delivering up to 90 MWe of low carbon electricity generating capacity by 2018, and is a commitment to climate change mitigation at a national level. There is also built-in mitigation in the design of the scheme, in that it is building on the experience with FM1 and employing the latest techniques from FM1 and elsewhere.
- 4.14.7 Requirement 35 *Sustainable Fuel Transport Management Plan*, secures the development and maintenance of a Sustainable Fuel Transport Management Plan, with periodic reviews (every five years) of the viability of using water transport. Furthermore, in Requirement 37 *Air Quality - Emissions Reduction* in the draft DCO, the Applicant has committed to tight emission limit values for the heavy goods vehicles that will transport fuel and waste materials.
- 4.14.8 ExA is satisfied that the nature of the generating station (waste derived fuel) and its design embed the key principles of climate change mitigation, notably the waste hierarchy (reduce, reuse, recycle, recover), and that the Applicant has taken account of climate change mitigation as far as reasonably possible through both the design and the additional mitigation secured through Requirements 35 and 37.

#### **4.15 CLIMATE CHANGE ADAPATION**

- 4.15.1 NPS EN-1 Section 4.8 states: *"New energy infrastructure will typically be a long-term investment and will need to remain operational over*

*many decades, in the face of a changing climate. Consequently, Applicants must consider the impacts of climate change when planning the location, design, build, operation and, where appropriate, decommissioning of new energy infrastructure. The ES should set out how the proposal will take account of the projected impacts of climate change.*

4.15.2 *The IPC should be satisfied that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections, taking account of the latest credible scientific evidence".*

4.15.3 The Applicant has addressed the need for the proposed generating station to be ready for the eventuality of extreme weather events, in particular flood risk, in its document Flood Risk Assessment [AD-077], and mitigation is secured in the draft DCO through Requirement 14 *Flood Risk Mitigation*. See also Section 4.20 below.

4.15.4 ExA is satisfied that the design of the generating station has embedded mitigation measures for climate change adaptation, and that the Applicant has secured climate change adaptation as far as reasonably possible at this time through Requirement 14.

#### **4.16 COASTAL CHANGE**

4.16.1 As an entirely land-based development not located near the coast, the proposed FM2 development has no impact with regard to the coast.

#### **4.17 COMMERCIAL IMPACTS**

4.17.1 The Applicant has addressed commercial impacts in its *Funding Statement* [AD-011].

4.17.2 The Funding Statement states: *"The Applicant is a joint venture that has been formed by SSE Generation Ltd, part of the SSE plc group (SSE), and WTI/EFW Holdings Ltd, a subsidiary of Wheelabrator Technologies Inc. (WTI). Both SSE and WTI are well established and recognised companies that benefit from substantial funds.*

4.17.3 *The Applicant has acquired the necessary interests and rights for the land within the Order limits that is within SSE's control, while the draft DCO would provide the necessary rights in respect of the other land within the Order limits. Therefore, no compulsory acquisition of interests or rights in land is being sought.*

4.17.4 *As no compulsory acquisition is required, it is anticipated that there is limited likelihood of any claims for compensation (including blight) and that even if such claims were to be made, the total costs involved would be very low. Article 15 makes appropriate provision for*

*compensation for any loss sustained in relation to the appropriation of rights in Kirkhaw Lane.*

- 4.17.5 *MEL will obtain financial backing for the Proposed Development from SSE and WTI. This will be committed by the presiding board of MEL. This would also involve providing funding for any compensation".*
- 4.17.6 ExA's view is that the Proposed Development would be on the site of an existing generating station, with no compulsory acquisition requirements, and no other obvious impediments.
- 4.17.7 The Applicant would appear to be a well-founded joint venture comprised of two substantial companies in the energy generation and transmission market place. None of the Interested Parties questioned the finances of the Applicant during the examination.

#### **4.18 COMMON LAW NUISANCE AND STATUTORY NUISANCE**

- 4.18.1 NPS EN-1 Section 4.14 *Common Law Nuisance and Statutory Nuisance* states: *"It is very important that, at the application stage of an energy NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent"*.
- 4.18.2 The Applicant has addressed nuisance in its *Statutory Nuisance Statement* [AD-032]. This document cross-refers to multiple locations in the ES [AD-044] and its associated appendices [AD-062 to AD-087]. According to the Applicant, the only potentially significant impacts relate to landscape/visual amenity and noise.
- 4.18.3 In conclusion, the Applicant states that: *"The only matters addressed by the EPA which have been assessed as potentially not being insignificant for the Proposed Development are identified as noise and visual amenity ... it has been demonstrated that the Proposed Development would have no significant noise or visual nuisance effects following the implementation of the identified embedded mitigation measures. Other potential nuisance aspects have been considered ... and through embedded mitigation no statutory nuisance effects are considered likely to occur.*
- 4.18.4 *Embedded mitigation has been secured by appropriate DCO requirements. As a result, it is not expected that the construction, operation or decommissioning of the Proposed Development would engage Section 79(1) and give rise to any statutory nuisance under the EPA, following the implementation of appropriate mitigation"*.
- 4.18.5 Examination of a number of causes of nuisance - such as dust, noise and vibration, landscape and visual impacts - is included elsewhere in this chapter.

- 4.18.6 Substantial dialogue took place during the examination around Article 18 of the draft DCO *Defence to Proceedings in Respect of Statutory Nuisance*.
- 4.18.7 The Applicant's first draft DCO [AD-006] removed all liability for claims for nuisance arising from the operation of the development in relation to the state of the premises, smoke, fumes, gases, dust, steam, smell, accumulation or deposit, insects, artificial lighting and noise. As NPS EN-1 (paragraph 4.14) makes clear, this defence should be available "*only to the extent that the nuisance is the inevitable consequence of*" the Proposed Development. Where the defence is employed, it is important that all of the factors should be adequately controlled by schemes approved under corresponding requirements in the DCO.
- 4.18.8 In Q2.7 of the ExA's first questions [PrD-05], ExA asked the Applicant what evidence there was that these nuisances were inevitable and would not be mitigated as set out in the ES to the extent that in each case this defence was required, and where such evidence was not clear why the defence should not be dis-applied as set out in NPS EN-1 paragraph 4.14. ExA also asked WMDC and the EA whether they were content that nuisance arising from the operation of the development would be adequately controlled by schemes approved under the corresponding requirements in the DCO.
- 4.18.9 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that it had some concerns about the extent of the defence sought by the Applicant.
- 4.18.10 In EA's submission at Deadline 1 [D1-006], EA stated that the operation of the development would be regulated by the EA through an Environmental Permit as required under the Environmental Permitting (England and Wales) Regulations 2010 (EPR) (as amended).
- 4.18.11 In ExA's Agenda Item 3 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to state why Article 18(3) had been left in place, and asked WMDC and EA to state whether they were content with the Article 18 wording in the draft DCO at Deadline 2 [D2-003/004].
- 4.18.12 The Applicant and WMDC tabled written submissions at Deadline 4 [D4-009 and D4-010, respectively], and the Applicant tabled a further written submission at Deadline 5 [D5-004]. In this latter submission, the Applicant stated that it had amended Article 18(2)(b) of the Draft DCO in line with the EA's recommendations by deleting reference to the Environmental Permit. The Applicant had also introduced a new requirement, Requirement 24 *Control of Operational Noise* to the draft DCO in order to provide a mechanism to monitor and control noise generated by the authorised development during its operational phase.

- 4.18.13 ExA is satisfied that Article 18 as amended in the draft DCO at Deadline 4 [D4-004] secures the necessary safeguards with regard to common law nuisance and statutory nuisance.
- 4.18.14 See elsewhere in this chapter for discussion on various specific potential causes of nuisance - notably noise and vibration, dust, smoke, and landscape and visual effects.

#### **4.19 DUST AND OTHER POTENTIAL NUISANCE**

- 4.19.1 NPS EN-1 Section 4.14 *Common Law Nuisance and Statutory Nuisance* states: *"It is very important that ... possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the IPC so that appropriate requirements can be included in any subsequent order granting development consent"*.
- 4.19.2 NPS EN-1 Section 5.6 *Dust, Odour, Artificial Light, Smoke, Steam and Insect Infestation* states: *"The Applicant should assess the potential for insect infestation and emissions of odour, dust, steam, smoke and artificial light to have a detrimental impact on amenity, as part of the Environmental Statement ..."*
- 4.19.3 *The IPC should satisfy itself that an assessment of the potential of artificial light, dust, odour, smoke, steam and insect infestation to have a detrimental impact on amenity has been carried out, and that all reasonable steps have been taken, and will be taken, to minimise any such detrimental impacts"*.
- 4.19.4 The Applicant has addressed potential nuisances in its *Statutory Nuisance Statement* [AD-032] and ES [AD-043/044] with supporting Appendices for *Air Quality* [AD-072], *Odour Management* [AD-073], *Noise Modelling and Survey* [AD-074/075], *Landscape and Visual Assessment* [AD-076], *Lighting Strategy* [AD-040] and *Human Health Risk Assessment* [AD-087].
- 4.19.5 The Applicant has assessed the significance of each of the potential nuisances against the legislative framework, and concluded that only Landscape and Visual and Noise will have a potentially significant impact. All other potential nuisances are assessed to have minor to negligible impact.
- 4.19.6 The Applicant has identified embedded mitigations for each type of nuisance [AD-032], through the design of the generating facility, conformance with necessary legislation, and the development of an Environmental Permit to be agreed with the EA.
- 4.19.7 Further mitigation measures will be secured through the draft DCO [D4-004] Requirements 18 *CEMP*, 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, 23 *Control of Noise During Construction*, 24 *Control of Operational Noise*, 25 *Control of Odour Emissions*, 26 *Control of Dust Emissions*, 27 *Control of Smoke*

*Emissions, 28 Control of Steam Emissions, 29 Control of Insects and Vermin and 38 Air Quality Monitoring.* Most of these requirements have been amended as a result of the examination.

- 4.19.8 Some potential nuisances are discussed in other sections of this report, particularly Sections 4.11 *Air Quality and Emissions*, 4.27 *Noise and Vibration*, and 4.32 *Traffic and Transport*, which were the subject of submissions from a number of Interested Parties.

#### **Control of Dust Emissions**

- 4.19.9 In ExA's Agenda Item 14 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked WMDC to clarify what mitigation measures it was relying on in the draft DCO with regard to construction phase dust and emission generating activities, and whether it required anything more than draft Requirement 26 (originally 25) *Control of Dust Emissions*.
- 4.19.10 WMDC did not make a submission at Deadline 4.
- 4.19.11 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the WMDC Scientific Officer's response on this point dated 13 March 2015 was to refer to a dust management guidance document that included measures to be considered in the CEMP. This guidance was based on national practice guidance.
- 4.19.12 The Applicant confirmed that such measures would be included within the scheme submitted to discharge Requirement 26, and stated that (in its view) no changes to the Requirement itself were considered necessary. ExA concurs with this view.

#### **Control of Odour Emissions**

- 4.19.13 In Q6.24 of the ExA's first questions [PrD-05], ExA asked the Applicant whether any quantified assessment of potential odour effects had been undertaken, in terms of baseline conditions, modified baseline (including FM1) and the potential impact of the Proposed Development, such that the environmental effects could be controlled by the DCO requirements and the environmental permit.
- 4.19.14 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that at the time of the DCO Application preparation, no significant odour sources had been identified at the site or in the area and therefore no odour baseline monitoring had been undertaken. With FM1 nearing commissioning, baseline odour patrols and odour monitoring were starting to be conducted in the area.
- 4.19.15 The Applicant stated that the Environmental Permit would specify a condition similar to that in the FM1 Permit that "*Emissions from the activities shall be free from odour at levels likely to cause pollution outside the site, as perceived by an authorised officer of the Environment Agency, unless the operator has used appropriate measures, including, but not limited to, those specified in any*

*approved odour management plan, to prevent or where that is not practicable to minimise the odour”.*

- 4.19.16 The Applicant further stated that draft Requirement 25 (formerly 24) *Control of Odour Emissions* would also control potential odour emissions through an agreed scheme of odour management and mitigation.
- 4.19.17 In the ExA’s Agenda Item 13 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked SDC to confirm that it was content with the revised wording of Requirement 25 (formerly 24) in the draft DCO at Deadline 2 [D2-003/004], and ExA asked Interested Parties to state any concerns and proposed mitigations for potential odour emissions.
- 4.19.18 The Applicant’s submission at Deadline 4 [D4-009] stated that the amendments sought by SDC in its LIR had been included, namely that SDC would be consulted by WMDC on the details submitted to discharge Requirement 25. No other submissions were received at Deadline 4.
- 4.19.19 ExA is satisfied that mitigation measures embedded in the design of the Proposed Development and those secured through the DCO requirements cited above the provide the necessary controls to secure the development with regard to nuisances.

## **4.20 FLOOD RISK**

- 4.20.1 NPS EN-1 Section 5.7 *Flood Risk* states: *"Applications for energy projects of 1 hectare or greater in Flood Zone 1 in England or Zone A in Wales and all proposals for energy projects located in Flood Zones 2 and 3 in England or Zones B and C in Wales should be accompanied by a flood risk assessment.*
- 4.20.2 *A flood risk assessment will also be required where an energy project less than 1 hectare may be subject to sources of flooding other than rivers and the sea (for example surface water), or where the EA, Internal Drainage Board or other body have indicated that there may be drainage problems. This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account".*
- 4.20.3 The Applicant addressed Flood Risk in its ES Appendix 12A *Flood Risk Assessment* [AD-077]. The Applicant has undertaken an assessment of the potential flood hazards due to both surface water and sewage, as well as the flood defences. They have assessed the possible impact of climate change, and have identified a range of mitigation measures to be embedded in the design of the generating station.
- 4.20.4 The Applicant has identified that the primary residual risk following the implementation of mitigation measures is risk of flooding as a result of blockages or failure of the drainage system, the Fryston Beck culvert,

or in the event of a storm in excess of the design storm. The former risk would be mitigated through regular maintenance.

- 4.20.5 In addition to the mitigation measures specified in the Flood Risk Assessment, Requirement 14 *Flood Risk Mitigation* in the draft DCO provided by the Applicant with the application [AD-006] secures the production by the Applicant, and approval by the EA, of a scheme for flood risk mitigation through the construction and operational phases of the generating station.
- 4.20.6 In the EA's Relevant Representation [RR-18], EA stated that it would have no objection to the scheme on the basis of flood risk provided that the DCO included appropriate Requirement(s) to ensure that the identified mitigations measures were applied throughout the appropriate stages of the development. Without the inclusion of appropriate requirements, EA's position would be one of objection.
- 4.20.7 In Q2.16 of the ExA's first questions [PrD-05], ExA asked the EA to explain how this expectation could be incorporated into Requirement 14, including identification of any draft wording that the EA would find appropriate. ExA also asked whether the EA considered that Requirement 14(2) should include reference to the detail of such mitigation measures as described in the Applicant's Flood Risk Assessment.
- 4.20.8 In the EA's submission at Deadline 1 [D1-006], the EA stated that, given the detail was to be agreed by the EA and local planning authority and was to be consistent with the principles and strategy set out in the Applicant's Flood Risk Assessment, it was considered that further detail did not need to be included in the Requirement 14 wording.
- 4.20.9 The draft DCO at Deadline 4 [D4-004] is therefore unchanged in this regard.
- 4.20.10 ExA is satisfied that mitigation measures embedded in the design of the Proposed Development and those secured through Requirement 14 in the draft DCO provide the necessary controls to secure the development with regard to flood risk.

## **4.21 HAZARDOUS SUBSTANCES**

- 4.21.1 NPS EN-1 Section 4.12 *Hazardous Substances* states: "*All establishments wishing to hold stocks of certain hazardous substances above a threshold need Hazardous Substances consent. Applicants should consult the HSE (Health and Safety Executive) at pre-application stage if the project is likely to need hazardous substances consent. Where hazardous substances consent is applied for, the IPC will consider whether to make an order directing that hazardous substances consent shall be deemed to be granted alongside making an order granting development consent*".



- 4.21.2 The Applicant in its ES [AD-044] Section 1.5 states that: *"It is not currently anticipated that the Control of Major Accident Hazards (COMAH) Regulations 1999 (as amended) will apply to the site due to the small volumes of hazardous materials that will be stored"*.
- 4.21.3 In ES Section 3.5, the Applicant states that: *"Flue Gas Treatment (FGT) residues will comprise fine particles of ash and residues from the flue gas treatment process, which will be collected in the bag filters. The FGT residue will be stored in a sealed silo adjacent to the flue gas treatment facility. Due to the alkaline nature of the FGT residues, they are classified as hazardous waste (in much the same way as cement). As a result, the residues will be transported by road in a sealed tanker to an appropriate treatment facility"*.
- 4.21.4 The Applicant goes on to state that: *"Storage areas for flammable/ toxic/ corrosive materials will be located in a separate locked fenced off area. Material data sheets will be available for all these materials and the COSHH (Control of Substances Hazardous to Health) assessments kept within the relevant Risk Assessment for the task"*.
- 4.21.5 The embedded mitigation measures referenced above will be in place through the design of the Proposed Development.
- 4.21.6 Additional mitigation will be secured through the draft DCO Requirements 18 *CEMP*, 38 *Air Quality Monitoring* and 42 *Waste Management: Construction and Operational Waste*. These requirements secure production of plans by the Applicant to be approved by the LPA before the Proposed Development may commence. The development will then be controlled through the Environmental Permit.
- 4.21.7 WMDC in its LIR [D1-001] re-states the Applicant's proposals for handling flue gas treatment residues as hazardous waste, but does not make any specific representation in this regard.
- 4.21.8 SDC and NYCC in their LIR [D1-016] make no mention of hazardous waste. EA in its written representations [D1-004] also makes no mention of hazardous waste.
- 4.21.9 ExA is satisfied that mitigation measures embedded in the design of the Proposed Development and those secured through the draft DCO Requirements 18, 38 and 42 provide the necessary controls to secure the development with regard to hazardous substances.

## **4.22 HEALTH**

- 4.22.1 NPS EN-1 Section 4.13 *Health* states: *"Where the proposed project has an effect on human beings, the ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate. The impacts of more than one development*

*may affect people simultaneously, so the Applicant and the IPC should consider the cumulative impact on health.*

- 4.22.2 *The direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests".*
- 4.22.3 The Applicant addressed health matters in its ES Appendix 18A *Human Health Risk Assessment* [AD-087], and summarised the position in its ES *Non-Technical Summary* Chapter 15 *Health Impact Summary*.
- 4.22.4 The *Human Health Risk Assessment* document considered the calculations of predicated pollution concentrations, and the baseline local health conditions in the administrative areas of WMDC, Leeds City Council, SDC and Doncaster Metropolitan Borough Council.
- 4.22.5 It also considered the potential for health effects from exposure to particulate matter, nitrogen dioxide and sulphur dioxide, as well as health effects arising from emissions of metals and organic substances.
- 4.22.6 The *Health Impact Summary* document cross-refers to other documents relating to Air Quality, Noise and Vibration, Water Resources, Flood Risk, and Ground Conditions. It concludes that during construction, operation and decommissioning: *"No significant health effects have been identified as a result of the construction or operation of the Proposed Development following the implementation of the identified mitigation measures"*.
- 4.22.7 WMDC considers health effects in Section 7 of its LIR [D1-001] from the perspectives of traffic and transport, air emissions and land contamination. WMDC highlights a number of potential health concerns with reference to higher than average negative health statistics already present in the Knottingly area.
- 4.22.8 In conclusion, WMDC considers that: *"While health impacts associated with air emissions are a particular area of concern in this LIR, it is acknowledged that the EPR process should provide an adequate means of dealing with any potential emissions from the development. Notwithstanding, the Council does not consider that the proposal meets the requirements of the NPPF or Local Plan Policy D20 because air quality within the AQMA will be made worse. Thus in view of the concerns of the internal consultees, WMDC recommends an additional Requirement in the DCO requiring a scheme for the monitoring of air pollution from the proposed development in the area to be agreed with the Local Planning Authority, in consultation with the Environment Agency, to ensure that the LPA are kept informed on a regular and programmed basis about any changes in the level of air pollution at locations within the area, which may be attributable to the development"*.
- 4.22.9 As recognised by WMDC, the Environmental Permit will clearly have a key role in safeguarding human health.

- 4.22.10 Mitigation measures in the ES have been embedded in the design of the Proposed Development, in terms of its stack height, emissions cleaning provisions, traffic and transport.
- 4.22.11 Further mitigation measures have been included in the draft DCO [D4-004] Requirements 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, 24 *Control of Operational Noise*, 26 *Control of Dust Emissions*, 37 *Air Quality Emissions Reduction* and 38 *Air Quality Monitoring*.
- 4.22.12 ExA is satisfied that the mitigation measures embedded in the design of the Proposed Development and those secured through draft DCO Requirements 19, 20, 24, 26, 37 and 38 will provide the necessary controls with regard to health.

#### **4.23 HISTORIC ENVIRONMENT**

- 4.23.1 NPS EN-1 Section 5.8 Historic Environment states: *"As part of the ES, the Applicant should provide a description of the significance of the heritage assets affected by the Proposed Development and the contribution of their setting to that significance ... As a minimum the Applicant should have consulted the relevant Historic Environment Record ... and assessed the heritage assets themselves using expertise where necessary according to the Proposed Development's impact"*.
- 4.23.2 The Applicant has addressed the historic environment in its ES [AD-044] Chapter 12 *Archaeology and Cultural Heritage*, Appendix 15A *Archaeology Desk Based Assessment* [AD-083], and in the ES Non-Technical Summary [AD-043] Chapter 12 *Archaeology and Cultural Heritage*.
- 4.23.3 In the *Archaeology and Cultural Heritage* document, the Applicant states: *"The desk based assessment of the study area has identified no designated heritage assets within the Site. In the wider area (within 1 km of the Site), 53 heritage assets were identified, including two Scheduled Monuments, one Grade I and ten Grade II listed buildings. Historical knowledge and understanding of the area is well documented from prehistoric (30,000 BC) through to modern times. Assets recorded from these periods range from chance finds to crop marks associated with early agriculture and ritual features"*.
- 4.23.4 The Applicant has considered impacts during construction, operations and decommissioning on designated heritage assets and has concluded that: *"With the implementation of mitigation, no significant effects on archaeology and cultural heritage assets have been identified"*.
- 4.23.5 The SoCG between the Applicant and the WYAAS [AD-095], signed by both parties and tabled with the application, listed the matters agreed between the two parties with regard to the Proposed Development. The SoCG stated: *"It is agreed that the Proposed Development would not have a significant effect upon any designated heritage assets or*

*their settings", but that "The Applicant must produce a written scheme of investigation in consultation with WYAAS, to be agreed prior to the commencement of the development".*

- 4.23.6 In Q7.8 of the ExA's first questions [PrD-05], ExA asked the WYAAS to confirm that the position as stated in the June 2014 SoCG had not changed, and to identify if there were any outstanding matters that needed to be addressed during the course of the examination. ExA also asked the Applicant to do likewise.
- 4.23.7 There was no submission from WYAAS at Deadline 1.
- 4.23.8 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the SoCG with WYAAS remained agreed and as far as the Applicant was aware there were no matters that would need to be addressed during the examination.
- 4.23.9 In accordance with the SoCG, the Applicant's revised draft DCO at Deadline 2 [D2-003] included amended text for Requirement 16 *Archaeology* to include details of the programme of archaeological investigation work that must be produced, consulted with WYAAS and approved by the planning authority before the authorised development could commence.
- 4.23.10 ExA is satisfied that the mitigation agreed in the SoCG with the WYAAS and secured through Requirement 16 provides the necessary control to secure the development with regard to the historic environment.

#### **4.24 LAND USE**

- 4.24.1 NPS EN-1 Section 5.10 *Land Use Including Open Space, Green Infrastructure and Green Belt* states: *"The ES (see Section 4.2) should identify existing and proposed land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan.*
- 4.24.2 *The IPC should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements or the IPC determines that the benefits of the project (including need), outweigh the potential loss of such facilities, taking into account any positive proposals made by the Applicant to provide new, improved or compensatory land or facilities".*
- 4.24.3 The Applicant has considered land use in the ES Non-Technical Summary [AD-043] Chapter 7 and the ES [AD-044] Chapter 10 both entitled *Land Use and Socio-Economics*.

- 4.24.4 The Applicant's Non-Technical Summary document states that: *"No significant effects on land use are anticipated as the majority of the Site lies within the existing Ferrybridge Power Station site and is currently used as a construction laydown area for FM1. The Site is also allocated for power generation use in the local development plan. No Public Rights of Way will be affected by the Proposed Development.*
- 4.24.5 In WMDC's LIR [D1-001], the Council stressed the importance of land use and socio economics, and stated that the principle of the development on the Ferrybridge site had been established by the long term existence of power generation in the Ferrybridge location since the 1920s. The Council was keen to see land use and socio-economic issues secured through an explicit requirement in the draft DCO.
- 4.24.6 In response, the Applicant added Requirement 48 *Employment, Skills and Training Plan* to the draft DCO at Deadline 4 [D4-004/005]. This requirement secures the principle that Work No. 1 (an onshore electricity generating station) cannot commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents had been submitted to and approved by the planning authority, and the approved plan must be implemented and maintained during the construction and operation of Work No. 1.
- 4.24.7 ExA is satisfied that the land use envisaged for the FM2 generating station is consistent with both national and local policy, and that mitigation measures secured through the draft DCO Requirement 48 meet the socio-economic needs for appropriate land use (see also Section 4.31 *Socio-Economic Impacts* below).

## **4.25 COAL MINING**

- 4.25.1 While there are numerous mentions of coal and coal-fired power stations in NPS EN-1, there is no mention of coal mining.
- 4.25.2 The Applicant deals with coal-related matters in the ES [AD-044] Chapter 13 *Ground Conditions* and Appendix 13B *CA Report*.
- 4.25.3 In the CA's Relevant Representation [RR-12], the Coal Authority stated that it was able to confirm that the proposal was located outside of both the Development High Risk Area and the licence area of underground coal mining activity. Accordingly, the CA had no concerns regarding unstable land issues resulting from past or current coal mining activity.
- 4.25.4 With regard to the potential sterilisation of coal resources at or close to the surface by this proposed NSIP, the CA requested that the Applicant consider this issue further.
- 4.25.5 As a result, the CA signed a SoCG with the Applicant [AD-092] in June 2014. The SoCG recorded agreement that:

- *It would not be practical to carry out the prior extraction of any surface coal resources that may exist beneath the site in advance of the Proposed Development being constructed;*
- *There are significant deep coal resources in the local area that could be worked in the future and that the Proposed Development would not prevent this;*
- *The Proposed Development would not result in the sterilisation of coal resources in the area.*

4.25.6 The Applicant and CA also recorded the fact that no matters had been identified at that stage that were the subject of disagreement between them.

4.25.7 In Q6.51 of ExA's first questions [PrD-05], ExA asked the CA and the Applicant to confirm that there had been no change to the position stated above.

4.25.8 The CA made no submission at Deadline 1 (or Deadlines 2-5). In the Applicant's submission at Deadline 1, the Applicant stated that it could confirm that there had been no change to the position stated, which was recorded in the SoCG agreed with the CA.

4.25.9 ExA is satisfied that there are no outstanding matters that require mitigating action with regard to coal.

## **4.26 LANDSCAPE AND VISUAL IMPACTS**

4.26.1 NPS EN-1 Section 5.9 *Landscape and Visual* states: *"The Applicant should carry out a landscape and visual assessment and report it in the ES ... The landscape and visual assessment should include reference to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The Applicant's assessment should also take account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales.*

4.26.2 *The IPC will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project".*

4.26.3 The Applicant has considered landscape and visual impacts in the ES Non-Technical Summary [AD-043] Chapter 8 *Landscape and Visual Amenity*, the ES [AD-044] Chapter 11 *Landscape and Visual Amenity* the ES Appendix 11A *Landscape and Visual Assessment Methodology*, and a *Landscape Strategy* [AD-041].

4.26.4 The Applicant has considered the construction, operation and de-commissioning phases, and states in the Non-Technical Summary: *"The existing landscape character is recognised to be influenced by existing large power stations which may be visible over long distances. Within the immediate local landscape, the Ferrybridge Power Station*

*site is considered to have a significant influence on the surrounding landscape character.*

- 4.26.5 In conclusion, the Applicant states: *"The only significant effect identified on visual amenity is an anticipated moderate adverse visual effect on residential properties around the northern end of Darkfield Lane, Pontefract. No significant adverse effects on landscape character are predicted. The Landscape and Biodiversity Strategies for the Site will increase the amenity value to site workers and visitors and enhance the green infrastructure and biodiversity value of the Site"*.
- 4.26.6 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the landscape assessment had concluded that effects on the national and regional landscape character areas would be negligible during construction and operation, largely as a result of the presence of the existing Ferrybridge 'C' Power Station and FM1, which provided the context for the proposed FM2 development. One representative viewpoint ... predicted a moderate adverse (significant) effect due to the nature and angle of the view. The Proposed Development, FM1 and the Ferrybridge 'C' Power Station structures would be viewed alongside each other with limited opportunities for mitigation.
- 4.26.7 In Q6.47 of the ExA's first questions [PrD-05], ExA asked WMDC to comment on the Proposed Development's impact on visual amenity with regard to local residents, and to state whether there were any additional mitigation measures that the Council would want the Applicant to consider and provide as part of the DCO to address any potential adverse effects on visual amenity.
- 4.26.8 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that visual amenity had been considered by the Council in Section 7.2 of the LIR [D1-001]. The Proposed Development would have some impact on the natural landscape when viewed from near or afar, and in particular the additional stacks and largest buildings would be visible from some distance away. However, the proposal would be largely viewed against the backdrop of the existing power station and would make very little alteration to the perception of the site and its surrounds.
- 4.26.9 WMDC also stated that landscaping requirements contained within the draft DCO could be more expansive and that revised requirements had been recommended in its LIR. The LIR had stated that it seemed unreasonable to require the Applicant to provide for a further scheme of off-site creative conservation / improvement to that required by the FM1 permission to try to mitigate some (although possibly not all) of the visual impact which the development might have on the nearest receptors to the site. WMDC stated that it considered that draft DCO Requirement 7 *Provision of Landscaping* did not go far enough to ensure proper landscaping of the site, and WMDC therefore

recommended that the ExA considered employing the wording of the Landscaping Conditions on the FM1 Permission.

- 4.26.10 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that in general the draft DCO combined landscaping with the proposed biodiversity enhancement strategy and management, so Requirements 7 *Provision of Landscaping*, 8 *Implementation and Maintenance of Landscaping* and 17 *Biodiversity Enhancement and Management Plan* should reflect this situation, in relation to approval of plans, ongoing maintenance and management, and implementation. In WMDC's view, Requirement 7 should incorporate items similar to the Knottingley Power station DCO (6 items listed). WMDC also proposed amended wording for Requirement 8.
- 4.26.11 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that Requirements 7 and 8 had been amended to incorporate elements of the FM1 planning conditions relating to landscaping. This wording had been included in the draft DCO at Deadline 4 [D4-004/005].
- 4.26.12 In the Applicant's submission at Deadline 5 [D5-003], the Applicant stated that it had accommodated WMDC's proposals at Deadline 4 with regard to the harmonisation of Requirements 7, 8 and 17 and the additional information in Requirements 7 and 8. The wording of Requirement 7 and 8 had been agreed with WMDC and this was documented within the SoCG submitted for Deadline 5 [D5-001/002].
- 4.26.13 Also the Landscaping Strategy, with which the landscaping scheme(s) must be in accordance, had been amended to incorporate the recommendations regarding magnesian grassland and had been submitted at Deadline 3 [D3-004/D3-005].
- 4.26.14 ExA is satisfied that the mitigation measures embedded in the design of the generating station and those secured through the draft DCO Requirements 7, 8 and 17 will provide the necessary controls with regard to landscape and visual impacts.

## **4.27 NOISE AND VIBRATION**

- 4.27.1 NPS EN-1 Section 5.11 *Noise and Vibration* states: *"Where noise impacts are likely to arise from the Proposed Development, the Applicant should include the following in the noise assessment:*
- *a description of the noise generating aspects of the development proposal leading to noise impacts, including the identification of any distinctive tonal, impulsive or low frequency characteristics of the noise*
  - *identification of noise sensitive premises and noise sensitive areas that may be affected*
  - *the characteristics of the existing noise environment*
  - *a prediction of how the noise environment will change with the Proposed Development in the shorter term such as during the*



*construction period, in the longer term during the operating life of the infrastructure, and at particular times of the day, evening and night as appropriate*

- *an assessment of the effect of predicted changes in the noise environment on any noise sensitive premises and noise sensitive areas*
- *measures to be employed in mitigating noise.*

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

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

4.27.3 The Applicant addressed noise and vibration in the ES [AD-044] Chapter 9 *Noise and Vibration* supported by Appendix 9A *Noise Modelling Methodology* [AD-074] and Appendix 9B *Noise Survey Report* [AD-075], as well as the ES Non-Technical Summary [AD-043] Chapter 6 *Noise and Vibration*.

4.27.4 In the ES Non-Technical Summary, the Applicant states: *"The potential for increased noise during both construction and operation has been predicted using noise models and the results compared with recorded baseline noise levels during the day and night. The degree of change has been compared with national standards for noise to conclude whether the increased noise will be noticeable at receptors and whether there is therefore the potential for significant effects.*

4.27.5 *The assessment has considered the potential for vibration effects from both construction and operation of the Proposed Development, and concluded that due to the distance to any utilities and/or buildings ... and the nature of the works proposed, it is highly unlikely there would be any vibration impacts.*

4.27.6 *The noise and vibration effects during decommissioning are anticipated to be similar to those identified for construction".*

### **Noise and Vibration Concerns and Issues**

4.27.7 Noise and vibration was probably the single most discussed issue during the examination.

4.27.8 In ExA's Agenda Item 11 at the Issue-Specific Hearing on the DCO [HG-005], relating to noise concerns, ExA asked WMDC and Applicant to state their positions, including any matters not yet agreed on the following:

- (a) Night time construction noise effects. The Applicant and WMDC to state their positions towards agreement on a satisfactory night-

time construction noise limitation level [draft Requirements 20(2) and 20(3)]

- (b) Noise and vibration effects of continuous 24 hour construction hours. The Applicant and other Interested Parties to comment on the potential for Requirement 20(2) (which identifies a specific noise level) to conflict with Requirement 23(2)(c) (where noise levels were subject to approval and were not as yet agreed), and also whether there should be cross-referencing between requirement 20(2) and 23 in relation to continuous noise monitoring
- (c) The proposed noise level of 55 dB LAeq (1hr) at the Order limit for night time working, and Requirement 20(3) for start-up and shut-down activities before 07.00 and after 19.30. The Applicant and WMDC to state their positions;
- (d) Additional noise assessment work being undertaken, and agreements reached at the meeting on 6th February 2015 between the Applicant and WMDC's Environmental Health Office. The Applicant, WMDC and SDC to state their positions
- (e) Noise and vibration receptor sensitivity and impact magnitude and significance. WMDC to state its position on construction noise re the classification of receptors (all medium sensitivity)
- (f) Any 'stop work' actions and monitoring provisions that the developer and contractors would have to take to ensure adherence to maximum permitted noise levels. WMDC and SDC to state whether they are content with the revised wording of Requirement 23 in the draft DCO at Deadline 2.

4.27.9 In the Applicant's submission at Deadline 4 [D4-009], the Applicant responded to ExA's seven inquiries as follows:

- (a) Matters had been agreed with the WMDC Environmental Health officer (EHO) through revised wording for Requirements 18 and 20. All matters were agreed;
- (b) There was indeed a potential conflict in the wording of these Requirements and the wording of Requirement 23 had therefore been amended to remove reference to evening and night-time periods in clause (c)
- (c) The Travel Plan had been agreed with WMDC and amendments made to Requirements 18 *CEMP*, 20 Construction Hours and 23 *Control of Noise during Construction*
- (d) As for (c)
- (e) The receptor noise limits agreed with WMDC were in accordance with BS5228 which defined the acceptable limit at residential receptors based on the ambient noise level already received (the ABC method)
- (f) The additional 'stop work' wording in Requirement 23 had been included at the request of the WMDC EHO.

4.27.10 In WMDC's submission at Deadline 4 [D4-010], WMDC responded to ExA's seven inquiries as follows:

- (a) Amended Requirements 20 & 23 had been agreed

- (b) Requirement 20 (2) had been agreed re noise level and a scheme of monitoring would be undertaken during the duration of the works at the Order boundary of the site, linked to meeting the level at the receptors. It had not yet been agreed what these levels equated to at the Order boundary
- (c) A level of 55 dB LAeq (1 hour) had been agreed at Category C receptors. Amendments to the condition to cover the start-up and shut down working activities had been agreed
- (d) Additional noise information had been provided in the first meeting and review of noise levels from the FM1 construction monitoring had been discussed in the second meeting which allowed a Category C and Category B condition to be agreed to protect the residents from night time construction activities
- (e) WMDC did not need to categorise receptors as medium as WMDC had to ensure that they were not caused a noise nuisance
- (f) WMDC was satisfied with Requirement 23 and that any stop works would be covered in the CEMP.

4.27.11 In a submission at Deadline 4 [D4-001], local resident M C Elphinstone, Secretary Oakland Hill Resident's Association, responded on behalf of Mrs Gill who had made a verbal contribution at the Issue-Specific Hearing on the DCO on 18 March 2015. Mr Elphinstone cited:

- Significantly increased levels of noise pollution coming from both the adjacent A1M motorway and building works associated with the construction of FM1
- Concerns that the noise levels would be exacerbated by FM2
- Increase in HGV traffic.

4.27.12 Mr Elphinstone did not produce any evidence in support of his submission.

4.27.13 In the Applicant's submission at Deadline 5 [D5-003], the Applicant stated that the wording of Requirements 20 *Construction hours* and 23 *Control of Noise During Construction*, as set out in the draft DCO at Deadline 4 [D4-004] had been agreed with the WMDC EHO and this was documented within the SoCG submitted for Deadline 5 [D5-001/002]. The Applicant had also agreed the wording of Requirement 24 *Control of Operational Noise* with the EHO. This wording had also been incorporated within the revised draft DCO at Deadline 4.

4.27.14 Re Mr Elphinstone's Deadline 4 submission, the Applicant stated that it had agreed appropriate controls with the WMDC EHO relating to the construction hours and the control of construction and operational noise. These controls would be secured by Requirements 20, 23 and 24 of the draft DCO. The wording of these Requirements had been agreed with the EHO and the agreement had been documented in the SoCG [D5-001/002].

4.27.15 The Applicant also responded to the reference that was made in the letter submitted on behalf of Mrs M Gill stating that the Highways Agency had insisted that the noise was due to MF1 (FM1). The

Applicant stated that, during the discussions that it had conducted with the Highways Agency as part of its pre-application consultation, the Agency had never suggested or expressed the view that noise experienced by residents of Oakland Hill was a result of the construction of FM1. It had been agreed with the Highways Agency during pre-application consultation as documented within the SoCG agreed with the Agency [AD-090] that noise attenuation barriers would not be necessary on the western side of the A1(M) to mitigate noise from the authorised development.

- 4.27.16 While ExA understands the points being made by the residents, they have submitted no evidence linking increased noise on the A1(M) with FM1 and no evidence leading to an expectation of a significant increase in noise due to the construction or operation of FM2.

### **Noise Monitoring During Construction and Operations**

- 4.27.17 In Q6.42 of the ExA's first questions [PrD-05], ExA asked the Applicant to provide further detail in terms of minimum monitoring requirements (for example, those measures that were included as part of FM1 construction monitoring).
- 4.27.18 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that a continuous noise monitor would be installed at the Order limits throughout the construction period, as had been installed and operated for FM1. In addition, for FM1 an additional programme of noise monitoring at six sensitive receptors around the site had also been agreed. Draft DCO Requirement 23 *Control of Noise During Construction* would now secure a tighter programme of noise monitoring during the construction of the Proposed Development.
- 4.27.19 In the Applicant's submission at Deadline 5, the Applicant stated that it had introduced a new requirement to the draft DCO, Requirement 24 *Control of Operational Noise*, to secure a mechanism by which to monitor and control noise generated by the authorised development during its operational phase. The Applicant stated that the wording of Requirement 24 had been agreed with the WMDC EHO and this had been documented in the SoCG that had been agreed with WMDC and submitted for Deadline 5 [D5-001/002]. The Applicant stated that the revised draft DCO submitted at Deadline 4 [D4-004] incorporated the new Requirement 24 as well as amendment to Article 18(2)(b).

### **Noise Complaints and Corrective Actions**

- 4.27.20 In ExA's Agenda Item 9 at the Issue-Specific Hearing on the DCO [HG-005], with regard to noise and vibration mitigation and monitoring, ExA asked the Applicant to state its position on WMDC's suggested requirement 7.8.11 in its Local Impact Report [D1-001] and WMDC to state how its suggested requirement 7.8.11 fitted with existing Requirements 18, 20 and 23.
- 4.27.21 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that Requirement 18 as originally drafted included a complaints

procedure relating to noise, odour and dust. Further discussions had taken place with the WMDC EHO and Requirement 18 had been amended to refer to substantiated noise complaints and corrective actions. This wording had been agreed with the EHO and was now included within the revised draft DCO at Deadline 4 [D4-004].

- 4.27.22 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that the 7.8.11 complaint procedure had now been covered in Requirement 18 *CEMP* and would be picked up with the Applicant/proposed Contractor within the detail of the *CEMP*.

### **Cumulative Effects of Noise**

- 4.27.23 In Q6.40 of ExA's first questions [PrD-05], ExA asked the Applicant to clarify whether consideration had been given to potential cumulative effects in the noise and vibration assessment, and to identify where this was to be found.
- 4.27.24 In the Applicant's submission at Deadline 1 [D1-011], the Applicant referred to Tables 19.3 and 19.4 of the ES [AD-044] where it had been concluded that there was no potential for significant cumulative noise and vibration effects with other proposed and planned developments due to the distance between these, so no further assessment had been provided after Table 19.4. Noise effects from road traffic associated with these developments were considered to be insignificant.
- 4.27.25 Noise control mitigation measures will be secured through amended Requirements 18 *CEMP*, 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, 23 *Control of Noise During Construction* and 24 *Control of Operational Noise* in the revised draft DCO [D4-004] and have been included in the recommended DCO provided at Appendix A.
- 4.27.26 With the wording of the mitigation measures agreed with the LPA that will have to enforce them, and with the EA controlling the Environmental Permit in which these matters will be examined in more detail, ExA is satisfied that the necessary mitigation measures and controls to secure the development with regard to noise and vibration controls are in place.

## **4.28 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES**

- 4.28.1 NPS EN-1 Section 4.10 *Pollution Control and other Environmental Regulatory Regimes* states: "*The IPC should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by*

*the relevant regulator. It should act to complement but not seek to duplicate them".*

- 4.28.2 The Applicant refers to pollution control in a number of places within the ES [AD-044]. In Chapter 5 *Planning Policy Context* the Applicant identifies Chapters 8, 9, 11, 12, 13, 16 and 18 as the locations where pollution control has been addressed in response to NPS EN-1 and WMDC's Development Plans and Policies.
- 4.28.3 The Environmental Permit will have a role, as will the CEMP secured through Requirement 18.
- 4.28.4 With regard to acceptable use of land, the Applicant considers this matter in Chapter 10 *Land Use and Socio-Economics*.
- 4.28.5 Land use has been assessed in Section 4.24 above, in which ExA has concluded that land use for the proposed development is consistent with Government policy for energy, notably NPS-EN1. It is also consistent with the WMDC's land use policy with regard to the Ferrybridge site.
- 4.28.6 With regard to the Waste Framework Directive and the Nearest Available Installation, the Proposed Development would form part of a network of sites to deliver sustainable waste management in the north of England as set out in application document 5.9 *Fuel Availability and Waste Hierarchy Assessment* [AD-037].

#### **4.29 SAFETY**

- 4.29.1 NPS EN-1 Section 4.11 *Safety* states: *"The Health and Safety Executive (HSE) is responsible for enforcing a range of occupational health and safety legislation some of which is relevant to the construction, operation and decommissioning of energy infrastructure. Applicants should consult with HSE on matters relating to safety"*.
- 4.29.2 In the ES Chapter 3 *The Proposed Development*, Section 3.11 *Hazard Prevention and Emergency Planning*, the Applicant states: *"The Applicant aims to protect human health by safely and responsibly managing site activity. A Health and Safety Plan covering the works, commissioning and operation of the Proposed Development will be written. A competent and adequately resourced CDM (Construction Design and Management) Coordinator and Principal Contractor will be appointed. The Applicant will ensure that its own staff, its designers and contractors follow the Approved Code of Practice (ACoP) laid down by the CDM Regulations 2007. Details of health and safety controls that will be employed at the Proposed Development during operation are provided in the Proposed Development Description Document"*[AD-031].
- 4.29.3 In fact, Chapter 8 of the *Proposed Development Description Document* simply states the above text on Health & Safety.

- 4.29.4 The document also states the Applicant's proposals with regard to fire: *"The Contractor will ensure that the design and build of the plant is in accordance with current Building Regulations, British and European Standards and insurance requirements. Unless otherwise specifically required the plant will be designed to comply with NFPA 850, Fire Protection for Electrical Generation Plants and High Voltage Direct Current Converter Stations"*.
- 4.29.5 ExA is satisfied that mitigation measures for potential health and safety issues are embedded in the design of the generating station and in the relevant regulatory regimes, and that these mitigation measures provide the necessary control regime for health and safety.

### **4.30 SECURITY CONSIDERATIONS**

- 4.30.1 NPS EN-1 Section 4.15 *Security Considerations* states: *"National security considerations apply across all national infrastructure sectors. Overall responsibility for security of the energy sector lies with DECC. It works closely with Government security agencies including the Centre for the Protection of National Infrastructure (CPNI) to reduce the vulnerability of the most 'critical' infrastructure assets in the sector to terrorism and other national security threats."*
- 4.30.2 *The Applicant should only include sufficient information in the application as is necessary to enable the IPC to examine the development consent issues and make a properly informed decision on the application"*.
- 4.30.3 The Applicant references various aspects relating to security throughout the ES [AD-044]. In Chapter 5 *Planning Policy Context*, the Applicant states that: *"Development will be designed to ensure a safe and secure environment that reduces opportunities for crime"*, and cross-refers to the document *Design and Access Statement* [AD-036].
- 4.30.4 The Design and Access Statement states: *"The details of the access arrangements to and within the Site will be secured by requirements that have been included within the draft DCO, while access to buildings will need to comply with Building Regulations. Building Regulations approval would not be sought until after a DCO had been granted and the detailed design has been completed"*.
- 4.30.5 Requirement 46 *Site Security* in the Applicant's draft DCO at Deadline 4 [D4-004] states that: *"The authorised development may not be commissioned until a scheme detailing security measures to minimise the risk of crime within the Order limits has been submitted to and, after consultation with West Yorkshire Police, approved by the planning authority. The approved scheme must be maintained and operated throughout the operation and decommissioning of the authorised development"*.

- 4.30.6 This requirement remained unchanged between the draft DCO version submitted with the application [AD-006] and the version submitted at Deadline 4 [D4-004].
- 4.30.7 ExA's view is that the Proposed Development will be on the existing Ferrybridge Power Station site. Security for both the existing coal fired power station, and FM1 which is currently under construction, is already in place. Extension of the security provisions to include FM2 should not be problematic.
- 4.30.8 ExA is satisfied that measures for potential security issues are embedded in the design of the generating station together with measures secured through Requirement 46 in the draft DCO, and that these measures provide the necessary control regime for security.

#### **4.31 SOCIO-ECONOMIC IMPACTS**

- 4.31.1 NPS EN-1 Section 5.12 Socio-Economic states: *"Where the project is likely to have socio-economic impacts at local or regional levels, the Applicant should undertake and include in their application an assessment of these impacts as part of the ES.*
- 4.31.2 *This assessment should consider all relevant socio-economic impacts, which may include the creation of jobs and training opportunities, the provision of additional local services, improvements to local infrastructure, effects on tourism, the impact of a changing influx of workers during the different construction, operation and decommissioning phases of the energy infrastructure, and cumulative effects.*
- 4.31.3 *The IPC should have regard to the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from any other sources that the IPC considers to be both relevant and important to its decision".*
- 4.31.4 The Applicant's Non-Technical Summary document [AD-043] states that: *"The Applicant is committed to taking practical measures to encourage the use of local suppliers and workers.*
- 4.31.5 *The Proposed Development is predicted to have a temporary significant beneficial effect on the local and regional economy through the creation of up to 500 construction jobs at the peak of construction (350 on average), some of which will provide opportunities for local employment, as well as indirect economic benefits during the construction phase".*
- 4.31.6 The Applicant goes on to state that: *"During operation the Proposed Development will employ between 35 and 46 full-time permanent staff. Assuming a conservative figure of 35 jobs, approximately 27 are expected to be filled by people from the local and regional area based on evidence from similar past projects".*



- 4.31.7 In WMDC's LIR [D1-001], the Council highlighted the importance of land use and socio economics, and stated that the principle of the development on the Ferrybridge site had been established by the long term existence of power generation in the Ferrybridge location since the 1920s. The Council also stated that there was a national need to replace coal fired power stations with cleaner/more environmentally friendly methods, and that the site had been designated in the Local Plan for power generation and job opportunities.
- 4.31.8 The Council stated that given the current levels of economic inactivity within the Knottingley area and the high levels of deprivation, it was important that any investment of this significance within the locality optimised the opportunities for positive benefits to the local community. A scheme detailing arrangements to promote employment and skills development opportunities for local residents needed to be agreed in advance with the Local Authority and the Wakefield Employment and Skills Partnership and arrangements should be operated throughout the lifetime of the development. One way to do this was through an Employment and Skills Plan, which could be secured by a requirement in the DCO.
- 4.31.9 The Applicant responded positively to WMDC's proposals, and added a new requirement, Requirement 48 *Employment, Skills and Training Plan* to the draft DCO at Deadline 4 [D4-004]. This requirement secures the development, implementation and maintenance of a plan for socio-economic development. The Proposed Development cannot commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to, and approved by, the planning authority. The approved plan must be implemented and maintained during the construction and operation of the works.
- 4.31.10 The Knottingley Power Plant application provides a relevant comparator. In his decision letter (dated 10 March 2015), the Secretary of State stated that he had decided to include in the DCO a requirement securing socio-economic benefits from the development.
- 4.31.11 ExA is satisfied that Requirement 48 *Employment, Skills and Training Plan* provides the necessary mitigation measures and control to secure the development with regard to socio economic matters as articulated by, and agreed with, the local planning authority.

## **4.32 TRAFFIC AND TRANSPORT**

- 4.32.1 NPS EN-1 Section 5.13 *Traffic and Transport* states: "*The consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development.*"
- 4.32.2 *If a project is likely to have significant transport implications, the Applicant's ES should include a transport assessment, using the ... methodology stipulated in Department for Transport guidance, or any*

*successor to such methodology. Applicants should consult the Highways Agency and Highways Authorities as appropriate on the assessment and mitigation.*

- 4.32.3 *Where appropriate, the Applicant should prepare a travel plan including demand management measures to mitigate transport impacts.*
- 4.32.4 *A new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure and the IPC should therefore ensure that the Applicant has sought to mitigate these impacts, including during the construction phase of the development. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the IPC should consider requirements to mitigate adverse impacts ".*
- 4.32.5 The Applicant has addressed traffic and transport in its ES Non-Technical Summary [AD-043] Chapter 4 *Transport and Access*, and its ES [AD-044] Chapter 7 *Transport and Access* together with Appendices 7A *Transport Assessment* [AD-069], 7B *Construction Travel Plan* [AD-070] and 7C *Operational Travel Plan* [AD-071].
- 4.32.6 In the Non-Technical Summary, the Applicant states: *"The transport and access assessment identifies the potential effects of the Proposed Development on Kirkhaw Lane, Stranglands Lane and the A162 Ferrybridge Bypass (the study area). The assessment considers the predicted number of vehicle movements generated during the construction and operation of the Proposed Development, and the sensitivity (including pedestrian and cyclist safety) and capacity of the road network. Effects during the decommissioning phase are anticipated to be similar to those during the construction phase".*
- 4.32.7 The Non-Technical Summary goes on to conclude: *"The transport assessment has assumed the 'worst case' number of HGVs during operation based on the maximum tonnage of fuel, and all fuel deliveries coming by road over shorter (not extended) delivery hours. In summary there are no predicted significant transport or access effects and the surrounding road network has the capacity to absorb the additional vehicle movements as a result of the Proposed Development.*
- 4.32.8 *The Applicant is continuing to consider other transport methods for material deliveries and ash removal (e.g. rail or barge) and to encourage the workforce to travel to Site by shared car, public transport or bicycle through the implementation of Travel Plans".*

#### **BASELINE CONDITIONS**

- 4.32.9 In Q6.7 of ExA's first questions [PrD-05], ExA asked the Highways Agency and WMDC whether they agreed with the justifications and assumptions used by the Applicant in the ES Chapter 7: *Transport and Access*, Section 7.4, for the baseline conditions for transport and traffic, and if not, whether they could explain what the implications

were for the assessment and the conclusions reached by the Applicant.

- 4.32.10 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that the 2013 survey data and suggested growth factors for calculating background traffic growth were considered to be acceptable. The removal of FM1 construction traffic and addition of FM1 operational traffic was also accepted. On this basis the methodology for calculating the 2017 base scenario was agreed.

### **CONSTRUCTION TRAFFIC**

- 4.32.11 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that Table 9.9 of the ES referred to potential noise disturbance during unsocial hours, noise from the existing Ferrybridge Power Station site and concern about 24 hour working. The only potentially significant effects would be at Oakland Hill receptors during night-time construction work and at sensitive receptors along the access route. Mitigation had been identified including a night-time construction noise limit at the site boundary (draft Requirement 20), restrictions on the types of activities that could take place outside 'normal' construction working hours (draft Requirement 20), provision of remote holding areas and control of temporary parking near noise sensitive receptors for any night-time construction deliveries, and designated HGV routes (draft Requirements 19 and 31).
- 4.32.12 In the Applicant's revised draft DCO submission at Deadline 2 [D2-003/004], the Applicant included a new clause 19(3)(g) "*details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work*".
- 4.32.13 In ExA's Agenda Item 10 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked WMDC to state its position on the Travel Plan, and on construction traffic impacts with regard to the Applicant's comparisons of FM2 with FM1.
- 4.32.14 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that it could confirm that the construction Travel Plan was now considered to be acceptable. WMDC's Environmental Health Officer was satisfied that FM1 construction did not have an impact on residents and that FM2 could be conditioned for out of hours construction work with similar requirements as FM1 including 55 dB LAeq (1 hour) noise levels at residential properties and HGVs not arriving at site until 7.30 am. However, WMDC would still have to look at the detail of the actual noise mitigation controls for night time activity when the CEMP was submitted.
- 4.32.15 WMDC stated that the proposed construction start times were considered to be acceptable. It was recognised that construction hours could be 24 hours a day during the peak construction months and this was considered acceptable. The issues previously raised in relation to

anticipated daily HGV flows and minibus usage were now agreed. On this basis, and taking into account that the impacts would occur outside peak hours, the construction traffic impacts were considered to be acceptable. In terms of the comparisons between FM1 and FM2, the removal of FM1 construction traffic flows, and addition of FM1 operational flows was considered to be acceptable. The use of FM1 HGV routing was also accepted, as was the assumption of nine minibus trips per day.

- 4.32.16 WMDC stated that the submitted Framework Travel Plan, which stated that the contractors would be requested to provide minibuses for transporting workers from their origin to the site, was not considered by WMDC to be sufficient, although it was acknowledged that this could be part of Requirement 19.
- 4.32.17 In the Applicant's submission at Deadline 5 [D5-003], the Applicant noted the WMDC response, and stated that the Construction Traffic Routing and Management Plan that must be approved under Requirement 19 would set out the proposals for the provision of mini buses for construction workers, including a timetable for provision in addition to measures to promote the use of sustainable transport modes.
- 4.32.18 The Applicant stated that Requirements 19 *Construction Traffic Routing and Management Plan* and 20 *Construction Hours* had been agreed with WMDC and that this agreement was documented in the SoCG [D5-001/002] submitted for Deadline 5.

#### **OPERATIONAL TRAFFIC**

- 4.32.19 In Q6.11 of ExA's first questions [PrD-05], ExA asked the Applicant to clarify various points with regard to the operational traffic flows in the Environmental Statement [AD-044] from section 7.6.14 onwards.
- 4.32.20 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated its methodology for estimating operational traffic flow. The 2017 modified baseline flows (with FM1 operational traffic) were not presented in ES Chapter 7 as a number of years of modified baseline needed to be calculated and it was considered that this would lead to potential misunderstanding within the Chapter. The full methodology for calculating the modified baseline was presented in the transport assessment (Appendix 7A of the ES) for the AM and PM peak hours (Tables 7A.12 and 7A.13). Figures 7A.11 to 7A.32 provided the traffic flows for the future baseline scenarios (2017 Construction Peak and 2018 Operational).

#### **TRAVEL PLAN FOR OPERATIONAL STAFF**

- 4.32.21 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it was not its intention to secure a site-wide travel plan for the entire Ferrybridge Power Station site with SSE Generation Limited as part of the Proposed Development. Instead, draft Requirement 33 (formerly 32) would secure an operational staff travel plan for the

Proposed Development. It had been agreed through a SoCG between the Applicant and the Highways Agency [AD-090] that such a plan related solely to the Proposed Development.

- 4.32.22 In the ExA's Agenda Item 5 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to clarify the additional measures envisaged in Requirement 33 *Travel Plan Operational Staff*, and WMDC to state whether it was satisfied that this requirement was sufficiently unambiguous and enforceable.
- 4.32.23 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that any additional measures that might be applied would depend on the outcome of the monitoring and review of the Travel Plan during its implementation as required by Requirement 33 (3)(d). Such additional measures would be determined by the Travel Plan Co-ordinator to encourage staff to use other modes of transport. The process for implementation of additional measures if targets were not achieved was likely broadly to be as follows:
- (1) analyse travel surveys to establish whether targets were being met;
  - (2) identify what measures effectively influenced travel modes;
  - (3) ask staff what potential measures would change their mode of travel;
  - (4) agree additional measures with the Highways Agency and planning authority to implement.
- 4.32.24 In WMDC's submission at Deadline 4 [D4-010], WMDC stated that in its view Requirement 33 was sufficiently unambiguous and enforceable. WMDC also confirmed that the peak construction daily HGV flows had been derived from traffic surveys for FM1 construction traffic in May 2013. The surveys revealed that FM1 had 60 trips per day; therefore the assumption of 100 trips per day was considered to be robust. The traffic flows for the construction phase were therefore considered to be acceptable.
- 4.32.25 In the Applicant's submission at Deadline 5 [D5-003], the Applicant stated that it had previously advised that FM1 and the authorised development would be separate operational entities. The travel plan for operational staff that must be submitted and approved pursuant to Requirement 33 (formerly 32) would therefore relate solely to the authorised development. In addition, it was relevant to note that the numbers of operational staff associated with both facilities were relatively modest (approximately 45 each) and would not result in significant travel demand.

#### **WORST CASE CALORIFIC VALUES FOR TRANSPORTED FUEL**

- 4.32.26 In Q6.8 of ExA's first questions [PrD-05], ExA asked the view of Interested Parties on the robustness of the use of a worst case calorific value of 10MJ/kg fuel, and the corresponding maximum weight of fuel to be transported, as the worst case scenario.

- 4.32.27 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the average calorific value (CV) of 10MJ/kg was the 'worst case' scenario for delivery by road, and that the design of the plant physically restricted the maximum throughput of fuel to 675,000 tonnes / year. An average calorific value below 10MJ/kg was not commercially advantageous as it reduced the electrical output from the generating station.
- 4.32.28 In WMDC's submission at Deadline 1 [D1-002], WMDC stated that although the lowest value of the fuel was 8.5 MJ/kg, given that fuel deliveries would have different calorific values, it was reasonable to take an average which was likely to be higher than the lowest value. On this basis the figure of 10 MJ/kg was considered to be acceptable. The Highways Agency had also confirmed that even if the calorific value were to fall to 8 MJ/kg, the corresponding increase in the number of vehicles using the Strategic Road Network would be well within the limits with which it could cope. The HGV capacity for fuel deliveries has been taken to be 22 tonnes. This is considered to be a robust assumption, as fuel payloads could in reality be higher, which would result in a lower level of HGV traffic.

#### **SUSTAINABLE FUEL TRANSPORT MANAGEMENT PLAN**

- 4.32.29 In the CRT's Relevant Representation [RR-20], CRT stated that it welcomed the inclusion of a requirement for a Sustainable Fuel Transport Management Plan within the draft DCO, and also recommended that Requirement 34 (now 35) be amended in order that a viability assessment of the costs associated with the upgrading of the existing wharf facility could be undertaken to determine whether its future use in the operation of FM2 was an option.
- 4.32.30 In Q2.12, Q6.5 and Q6.9 of ExA's first questions [PrD-05], ExA noted that the ES [AD-044] Section 3.2.2 allowed for 100% operational and construction deliveries by road, and only an aspiration for materials to be brought in by other means (e.g. rail and water), while the draft DCO is not specific on this point. ExA also noted that the ES Chapter 7: *Transport and Access*, Section 7.4.15, stated that, as part of FM1, the Applicant was in discussions with fuel suppliers and rail hauliers to establish the feasibility of using rail for fuel deliveries.
- 4.32.31 ExA therefore asked the Applicant:
- (1) to explain why rail and water transport had not been given higher prominence as delivery mechanisms;
  - (2) to state its position on the quantum of freight which would be waterborne for FM2 and if applicable, how such a quantum would be secured through the DCO or plans to be approved under the DCO;
  - (3) to give its response to the CRT's proposal for amending Requirement 35 *Sustainable Fuel Transport Management Plan* of the draft DCO, and the implications of the proposed amendment,

for example whether the wharf area was within the draft DCO order limits;

- (4) to state how its commitment to review the use of transport by barge would be implemented and monitored (e.g. would the Applicant have to inform the Local Planning Authority or undertake a review at a specified interval);
- (5) to provide an update on the status of the discussions with fuel suppliers and rail hauliers, the potential impacts of fuel deliveries by rail, and the extent to which these had been assessed in each of the technical assessment chapters of the Environmental Statement.

- 4.32.32 ES Chapter 7 makes clear that the traffic volumes include the transport of bottom ash and flue gas treatment (FGT) residue as well as fuel and consumables.
- 4.32.33 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that a worst case scenario based on all waste derived fuel and consumables being transported by road had been carried out and demonstrated that there was sufficient capacity on the highway network. The Applicant also stated that it was unable to disclose discussions with fuel suppliers, due to their commercial nature, but discussions were underway. The Sustainable Fuel Transport Management Plan (draft Requirement 34 (now 35)) would be used to assess each potential supply contract against a defined set of criteria, in order to determine the most appropriate and sustainable mode of transport for that contract. Road, rail and barge were all to be included within the appraisal tool.
- 4.32.34 In the Applicant's revised draft DCO at Deadline 2 [D2-003], the Applicant proposed amended wording for Requirement 35 to reflect the CRT's Relevant Representation.
- 4.32.35 In the ExA's Agenda Item 16 at the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the Applicant to state why Requirement 35 still did not refer to the proposed Transport Liaison Committee as discussed with the CRT, and to make explicit the term 'periodically' at Requirement 35(5).
- 4.32.36 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the wording of Requirement 35 had been agreed with the CRT, and that this was documented within the agreed SoCG with that body [D1-009]. The Applicant stated that the equivalent FM1 planning condition (Condition 61) similarly did not explicitly mention the use of a Transport Liaison Committee, but nevertheless, the use of the Transport Liaison Committee was included within the details of the plan developed and used for FM1, and this would also be the case for the FM2 development. The Applicant also noted ExA's comments relating to the word 'periodically', and Requirement 35(5) had been amended in the final draft DCO at Deadline 4 [D4-004] to refer to a specific review/appraisal period of every five years.

## **ROAD CLASSIFICATIONS**

- 4.32.37 In Q6.12 of ExA's first questions [PrD-05], ExA asked the Applicant to provide further justification for the roads being classified as they had been in Chapter 7 of the ES [AD-044], since the explanation given involved a degree of professional judgement.
- 4.32.38 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated its rationale. With regard to Kirkhaw Lane, there was very low pedestrian and cycle activity, and very few sensitive receptors with only three properties close to Stranglands Lane. The existing HGV route already was used by other companies and historically by Ferrybridge 'C' traffic with low traffic flows. There was no severance effect, and Kirkhaw Lane was considered very low sensitivity.
- 4.32.39 With regard to Stranglands Lane, there was low pedestrian and cycle activity, and it was an existing HGV route. There were few sensitive receptors along the length between Kirkhaw Lane and the A1 and traffic flows were well within link capacity. There were no identified severance or delay problems, and Stranglands Lane was considered low sensitivity.
- 4.32.40 With regard to the A162 Links both North and South of Stranglands Lane, the A162 was previously the main A1 trunk road and had very low pedestrian and cycle activity. There were very few sensitive receptors close to the carriageway. Traffic flows were substantially below previous A1 flows and there was ample spare capacity to accommodate the additional FM1 and FM2 traffic flows. There were no severance or delays experienced, and these links were considered to be very low sensitivity.
- 4.32.41 There were no other submissions on this matter, and it did not appear to be an issue for Interested Parties.

## **MITIGATION MEASURES SECURED OUTSIDE THE FM2 DCO**

- 4.32.42 In Q6.16 of ExA's first questions [PrD-05], ExA asked the Applicant to clarify the extent to which FM2 was reliant on transportation and access mitigation measures that were to be secured and delivered outside of the FM2 DCO (i.e. that might be part of FM1 consent or other highway improvements), and identify for any such mitigation how this mitigation would be delivered.
- 4.32.43 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that the Proposed Development was not reliant on any mitigation measures that were to be secured and delivered outside of the draft DCO. The FM1 rail siding and gantry had now been constructed and was available for shared use with the Proposed Development and the highway improvements at the Dish Hill Roundabout on the A162 had been completed in 2013. All of the mitigation measures described in Section 7.7 of Chapter 7 of the ES would be secured by draft Requirements 19 and 32-35 in the draft DCO.



## **ROYAL MAIL COLLECTION, TRANSPORT AND DELIVERY**

- 4.32.44 In Q6.18 of ExA's first questions [PrD-05], ExA noted that in Royal Mail's Relevant Representation [RR-13], Royal Mail had stated that it had no issue with the principle of the proposed FM2 Power Station going ahead, but it was concerned about the potential for disruption to its mail collection, transport and delivery during the construction and operation phases. ExA asked Royal Mail whether it was now able to clarify its position with regard to the Proposed Development, and where Royal Mail had outstanding concerns, to identify how it would wish these concerns to be addressed and secured as proposed requirements in the draft DCO.
- 4.32.45 Royal Mail made no submissions at Deadlines 1-5, and ExA has therefore deduced that Royal Mail has no concerns that it is prepared to articulate as proposed requirements in the draft DCO.

## **IMPACT ON RAIL NETWORK**

- 4.32.46 In Q6.19 of ExA's first questions [PrD-05], ExA noted that Network Rail Infrastructure Limited's Relevant Representation [RR-21] had highlighted a number of concerns:
- the import of raw materials and export of waste products when the power station was operational by rail with regard to additional train paths
  - headroom on roads under rail bridges for construction traffic
  - the need to arrange railway possessions for any work on road/rail structures.
- 4.32.47 ExA asked Network Rail to clarify whether protective provisions were required in the draft DCO to address its concerns, and if so, whether it had any proposed wording. ExA also asked the Applicant to confirm whether an oversailing licence would be required; if so, what implications this would have during construction and whether these implications would affect the construction methodology assessed in the Environmental Statement.
- 4.32.48 Network Rail made no submissions at Deadlines 1-5.
- 4.32.49 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that an oversailing licence for crane components over the railway was not anticipated to be required and Network Rail had not indicated this requirement during consultation. It was not expected that there would be any other construction related impacts on rail infrastructure. The Applicant also stated that transport effects had been based on the worst case of all movements taking place by road, and that the Applicant could not commit to the use of rail or barge at this stage as no contracts were yet in place with suppliers.
- 4.32.50 Traffic and transport mitigations will be secured through DCO Requirements 19 *Construction Traffic Routing and Management Plan*, 32 *Operational Traffic Routing and Management Plan*, 33 *Travel Plan*:

*Operational Staff, 34 Operational Deliveries, and 35 Sustainable Fuel Transport Management Plan.*

- 4.32.51 These requirements were revised where necessary by the Applicant in updated drafts of the DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004].
- 4.32.52 ExA is satisfied that the above requirements provide the necessary mitigation measures and controls to secure the development with regard to traffic and transport.

### **4.33 WASTE MANAGEMENT**

#### **WASTE GENERATION AND USE OF RESOURCES**

- 4.33.1 NPS EN-1 Section 5.14 *Waste Management* states: *"The Applicant should set out the arrangements that are proposed for managing any waste produced and prepare a Site Waste Management Plan. The arrangements described and Management Plan should include information on the proposed waste recovery and disposal system for all waste generated by the development, and an assessment of the impact of the waste arising from development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation. The Applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.*
- 4.33.2 NPS EN-1 goes on to state: *"The IPC should consider the extent to which the Applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of the Proposed Development. It should be satisfied that any such waste will be properly managed, both on-site and off-site, the waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available, and adequate steps have been taken to minimise the volume of waste arisings".*
- 4.33.3 The Applicant has addressed waste management in its ES Non-Technical Summary [AD-043] Chapter 13 *Waste and Resource Management*, its ES Volume 1 (Main Report) [AD-044] Chapter 16 *Waste and Resource Management*, together with ES Appendix 16A *Site Waste Management Plan* [AD-084] and Appendix 17B *WRATE (Waste and Resources Assessment Tool) Assessment* [AD-086]. The Applicant has also supplemented the ES with its report 5.9 *Fuel Availability and Waste Hierarchy Assessment* [AD-037].
- 4.33.4 In the ES Non-Technical Summary, the Applicant states: *"The assessment has taken into consideration the likely effects associated with the generation of waste and use of resources during the construction and operation of the Proposed Development".*

- 4.33.5 The Applicant estimates that the construction of the Proposed Development will generate approximately 37,800 tonnes of waste based on records from previous comparable construction projects, and states that: *"This is considered in the context of regional construction, demolition and excavation waste arisings of around 4.7 million tonnes per year in the Yorkshire and Humber region. In 2008, 85% of this type of waste in England was recovered or re-used. Therefore the level of waste expected to be generated from the construction of the Proposed Development is not considered significant or likely to lead to any capacity issues within the regional waste management network. Assuming a similar proportion of demolition waste is recycled at the decommissioning phase, the decommissioning effects are anticipated to be similar"*.
- 4.33.6 The Applicant goes on to say that: *"A Site Waste Management Plan will be implemented by the contractor to reduce, re-use and recycle construction waste where feasible (a framework SWMP is included in the ES). The Proposed Development is being designed to minimise excavation waste by balancing the 'cut' of surplus material and 'fill' to level the Site prior to construction as much as possible"*.
- 4.33.7 The Applicant states that during operations: *"The Proposed Development will generate up to 116,000 tonnes of ash and up to 22,500 tonnes of flue gas treatment residue per year, as well as approximately 9 tonnes of general office waste. Following appropriate storage on Site, the ash will be taken off Site for recycling wherever possible. In the context of commercial and industrial waste arisings of around 1.26 million tonnes per year in Wakefield ... the generation of waste during operation of the Proposed Development is not considered to be significant"*
- 4.33.8 The Applicant concludes that: *"There will be no significant effects as a result of waste arising from the construction or operation of the Proposed Development"*.
- 4.33.9 In the EA's Relevant Representation [RR-18], EA stated that it welcomed and supported the inclusion of draft DCO Requirement 42 *Waste Management: Construction and Operational Waste*. EA considered that the potential impacts of waste management from the project had been considered and regard had been given to the waste hierarchy and designing waste out of the construction phase.
- 4.33.10 EA stated that, if waste materials were to be used in elements of the site construction, a suitable exemption or environmental permit would be required. At this stage specific advice was not possible until EA was aware whether or not waste would be used in construction. The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials were applicable for any off-site movements of wastes. The Applicant as a waste producer therefore had a duty of care to ensure that all materials removed went to an appropriate permitted facility and all relevant documentation was completed and kept in line with regulations.

- 4.33.11 In Q2.19 of the ExA's first questions [PrD-05], ExA asked the Applicant:
- (1) to state what its response was to the EA's statement with regard to the Environmental Permit and the treatment of waste
  - (2) to state whether waste materials would be used in site construction
  - (3) to state, if so, whether the extent of such use would be secured under the DCO, and if so, how
  - (4) to state how it would comply with its duty of care with regard to waste materials removed from site.
- 4.33.12 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it agreed with the EA's statement, and that it would not import any waste materials to site.
- 4.33.13 Draft DCO Requirement 42 *Waste Management: Construction and Operational Waste* is unchanged in the Applicant's revised draft DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004]. This requirement secures the submission by the Applicant, and approval by the planning authority, of a Site Waste Management Plan in accordance with the principles set out in Chapter 16 of the ES before the authorised development may commence.

#### **WASTE HIERARCHY AND SUSTAINABLE WASTE MANAGEMENT**

- 4.33.14 NPS EN-3 Section 2.5 states: *"An assessment of the proposed waste combustion generating station should be undertaken that examines the conformity of the scheme with the waste hierarchy and the effect of the scheme on the relevant waste plan or plans where a proposal is likely to involve more than one local authority. The application should set out the extent to which the generating station and capacity proposed contributes to the recovery targets set out in relevant strategies and plans, taking into account existing capacity"*.
- 4.33.15 *"The IPC should be satisfied that management plans for residue disposal satisfactorily minimise the amount that cannot be used for commercial purposes. The IPC should give substantial positive weight to development proposals that have a realistic prospect of recovering residues"*.
- 4.33.16 The Applicant has addressed the conformity of the Proposed Development with the waste hierarchy and the effect of the Development on the relevant waste plans in its *Fuel Availability and Waste Hierarchy Assessment* [AD-037].
- 4.33.17 The Applicant has analysed fuel availability in the region from sources that would otherwise go to landfill, and concluded that there is adequate availability of fuel.
- 4.33.18 The Applicant has done a waste hierarchy compliance review in relation to the Proposed Development, and concluded that *"the operation of the Proposed Development would be in accordance with*

*the waste hierarchy in that it would move the management of residual wastes, predominantly arising in the north of England, away from landfill and up to recovery in the hierarchy".*

- 4.33.19 The Applicant has conducted a waste policy compliance review and concluded that that *"the scheme would be in compliance with the relevant waste plans of the waste planning authorities from which the Proposed Development is likely to obtain its feedstock"*.
- 4.33.20 The Applicant has assessed the Proposed Development in relation to national recovery targets, and concluded that *"the Proposed Development could make a significant contribution (of up to 5%) to meeting the 11.9 Mt shortfall in national energy recovery capacity that the government expects to remain by 2020"*.
- 4.33.21 The Applicant has developed plans for residue disposal in terms of storage, handling and transport in its ES [AD-044] Section 3.5 (see also Section 4.21 *Hazardous Waste* above).
- 4.33.22 The LIR from WMDC [D1-001] states that: *"The Council's adopted Waste Development Plan Document outlines the overall approach to waste management in the district"*.
- 4.33.23 WMDC goes on to summarise the waste policies that will apply to the FM2 Proposed Development (W1-W7). In addition, Core Strategy Policy CS15 (Waste Management) states that: *"waste will be managed using the 'waste management hierarchy' and that sites for waste management will be identified, while Development Policy D28 (Sustainable Construction and Efficient Use of Resources) states that the Council will consider the use of renewable and recycled materials during construction, demolition and excavation wastes, as desirable"*.
- 4.33.24 In assessing the application, the Council states that: *"The applicant's waste documents have been considered by several WMDC departments, not least Waste Policy, Highways, and Spatial Policy ... The applicant suggests that the proposed recovery operation will complement recycling initiatives by only accepting the waste that remains after recycling has been carried out, thereby forming part of an integrated waste management system that supports the waste hierarchy. In principle this is acceptable"*.
- 4.33.25 The Council also notes that the facility will reduce the amount of waste material that may otherwise be sent to landfill, saving valuable landfill space but also reducing greenhouse gas emissions (including methane) that would otherwise have been generated from the breakdown of waste material had it gone to landfill, thus helping to meet the Landfill Directive.
- 4.33.26 WMDC records the fact that the Applicant is conservatively assuming that no Local Authority Collected Waste that is currently being sent to landfill in northern England would be available to the Proposed Development, but that a very large quantity of Commercial and Industrial Waste (C&IW) arising in northern England is currently being

landfilled at non-hazardous waste landfills and a significant fraction of this is of a type from which energy could be recovered.

- 4.33.27 The Council expressed some reservations about the capacity need for energy from waste facilities, but accepted that *"as a National Significant Infrastructure project, FM2 is deemed by the UK Government to meet a capacity need in accordance with National Policy Statement (NPS) EN-3"*.
- 4.33.28 The Council stated in conclusion that: *"taking account of the findings of the ES, the advice given by the EA and the fact that an Environmental Permit must still be obtained separately to the DCO, it is considered that the Requirements contained within the DCO would adequately mitigate the impacts of the development and ensure that the proposal would not undermine the Council's waste management strategy"*.
- 4.33.29 ExA believes that the Proposed Development complies with the waste hierarchy in that it is driving waste up the hierarchy from landfill to recovery of energy, and that the Proposed Development complies with NPS EN-3 Section 2.5. Plans for residue storage and disposal are also sound.
- 4.33.30 ExA is satisfied that the mitigation measures embedded in the design and those secured through DCO Requirement 42 will provide the necessary controls with regard to waste management.

#### **4.34 WATER QUALITY AND RESOURCES**

- 4.34.1 NPS EN-1 Section 5.15 *Water Quality and Resources* states: *"Where the project is likely to have effects on the water environment, the Applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment as part of the ES or equivalent"*.
- 4.34.2 The Applicant has addressed water quality and resources in its ES Non-Technical Summary [AD-043] Chapter 9 *Water Resources and Flood Risk*, and its ES Volume 1 (Main Report) [AD-044] Chapter 12 *Water Resources and Flood Risk*.
- 4.34.3 In the ES Non-Technical Summary, the Applicant states: *"The assessment identifies the key water bodies that may receive run-off from the Site during construction, operation and decommissioning of the Proposed Development, and considers the potential contamination risk to these water bodies as a result."*
- 4.34.4 *The main surface watercourses close to the Site are the River Aire to the east and Fryston Beck, which flows through the Ferrybridge Power Station site, partly open and partly underground. The Site is not within a groundwater protection zone; however the groundwater beneath the site is used for public water supply (defined as a Principal Aquifer).*

- 4.34.5 *The regulator for the water environment (the Environment Agency) defines the existing quality of watercourses by their 'potential' in terms of ecological and chemical quality in accordance with the Water Framework Directive".*
- 4.34.6 The Applicant has considered possible effects during construction and operations and states: *"The assessment has concluded that during construction there is the potential for spillages to occur, but the likelihood of these occurring would be very low through the use of best practice construction methods ... During operation of the Proposed Development, the risk and potential impacts are largely the same as those identified for the construction phase, and therefore will be managed by similar best practice measures for working procedures and the storage of materials and fuels. These measures will be implemented through the site Environmental Management System that will be developed by the operator to maintain compliance with the Environmental Permit".*
- 4.34.7 The Applicant concludes: *"No significant effects on surface or ground water bodies are predicted due to the proposed use of best practice measures during construction, operation and decommissioning, and the design of the drainage system for the Proposed Development".*

#### **DESIGN OF FUEL BUNKER**

- 4.34.8 In the EA's Relevant Representation [RR-18], EA recommended amended wording to Requirement 5 *Design of Fuel Storage Bunker*, specifically that a new clause 5(2) should be inserted: *"The design of the fuel storage bunker must be informed by the results of the groundwater table level survey approved under requirement 6(1)".*
- 4.34.9 In Q2.13 of the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommended amendments to DCO Requirement 5.
- 4.34.10 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 5, and that the wording was documented within a SoCG with EA [D1-013].
- 4.34.11 In the EA's submission at Deadline 1 [D1-006], EA stated the same position as the Applicant, with the proposed wording included in its submission.
- 4.34.12 The Applicant's revised draft DCO at Deadline 2 [D2-003/004] contained the agreed wording.

#### **PRE-DEVELOPMENT GROUND WATER TABLE SURVEY**

- 4.34.13 In the EA's Relevant Representation [RR-18], EA recommended amendments to the wording of Requirement 6 *Pre-development Groundwater Table Level Survey*, specifically to clarify how the groundwater table level survey should be undertaken.

- 4.34.14 In Q2.14 of the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommended amendments.
- 4.34.15 In the Applicant's submission at Deadline 1, the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 6, and that the wording was documented within a SoCG with EA [D1-013]. In its submission at Deadline 1, the EA stated the same position, with the proposed wording included in its submission.
- 4.34.16 The Applicant's revised draft DCO at Deadline 2 [D2-003] contains the agreed wording, but also a tailpiece to clause 6(2)(a) that had not at that stage been agreed: "*or within such other boreholes on the Order land as the planning authority, after consultation with the Environment Agency, may approve*". The Applicant also omitted the wording that the survey "*accounts for the effects of abstractions and river levels on the groundwater table level*" which was within the agreed wording in the EA's Written Representation [RR-18].
- 4.34.17 In the ExA's Agenda Item 6 at the Issue-Specific Hearing on the DCO on 18 March 2015 [HG-005], ExA asked the EA to state whether it was content with the Deadline 2 wording, and in particular the added tailpiece and omitted wording. ExA also asked the EA to state its position with regard to the wording on Requirement 6 in the SoCG between itself and the Applicant.
- 4.34.18 The EA's written submission to the Issue-Specific Hearing [CoRR-006/CoRR-07] confirmed that the wording of Requirement 6 was agreed, and EA did not make any further submission at Deadline 4.

#### **SURFACE AND FOUL WATER DRAINAGE**

- 4.34.19 In EA's Relevant Representation [RR-18], EA stated that it would have no objection to the scheme on the basis of pollution impacts to surface waters provided that the DCO included appropriate Requirement(s) to ensure that the identified mitigation measures were applied throughout the appropriate stages of the development. Without the inclusion of appropriate requirements, its position would be one of objection. EA stated its expectation that where relevant an assessment of sustainable drainage systems (SuDs) along with proposed mitigation would be submitted as part of the details required by Requirement 13 *Surface and Foul Water Drainage*.
- 4.34.20 In Q2.15 of the ExA's first questions [PrD-05], ExA asked the Applicant for its response to the EA's expectation, and asked the EA to explain how this expectation could be incorporated into Requirement 13, including identification of any draft wording that the EA would find appropriate.
- 4.34.21 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that through the SoCG agreed between the EA and the Applicant [D1-013], amended wording of draft Requirement 13 had



been agreed, as noted, and would be included in the revised draft of the DCO at Deadline 2.

- 4.34.22 In EA's submission at Deadline 1 [D1-006], EA stated that its Relevant Representation was intended to re-iterate that, at the stage when details of the surface water drainage system design were submitted for approval, those details should include consideration and mitigation of any risks to controlled waters. Provided that Requirement 13 retained the need for consultation with the EA on the details of the surface and foul water drainage systems, EA did not consider that any amendment to the requirement was needed. EA stated that it had discussed and agreed the wording of a number of requirements with the Applicant, and the agreed wording of these requirements was set out in the SoCG between the Applicant and EA dated January 2015. EA understood that the Applicant would include all agreed wording as set out in the SoCG within the DCO.
- 4.34.23 The amended wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].

#### **CONTAMINATED LAND AND GROUNDWATER**

- 4.34.24 In the EA's Relevant Representation [RR-18], EA stated that it would have no objection to the scheme on the basis of the risks to groundwater resources provided that the DCO included appropriate Provisions and Requirement(s) to ensure that the identified mitigation measures were applied throughout the appropriate stages of the development. Without the inclusion of appropriate provisions and requirements, EA's position would be one of objection.
- 4.34.25 EA stated that a site investigation and risk assessment had been completed, which indicated that the risk to controlled waters was considered to be low. However, the EA requested the inclusion of an additional requirement to ensure that contamination that had not previously been identified was satisfactorily dealt with if this was discovered during the construction phase.
- 4.34.26 In Q6.48 of the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommendation for inclusion of the above in Requirement 15 *Contaminated Land and Groundwater*.
- 4.34.27 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 15, and that the wording was documented within a SoCG with EA [D1-013].
- 4.34.28 In EA's submission at Deadline 1 [D1-006], EA stated that it had discussed and agreed the wording of Requirement 15 with the Applicant. The agreed wording of the requirement was set out in the SoCG between the Applicant and EA dated January 2015. EA understood that the Applicant would include all agreed amended wording within the DCO.

- 4.34.29 The agreed wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].
- 4.34.30 In summary, various aspects relating to water quality and resources have been secured in the draft DCO through Requirements 5 *Design of Fuel Bunker*, 6 *Pre-development Groundwater Table Level Survey*, 13 *Surface and Foul Water Drainage* and 15 *Contaminated Land and Groundwater*.
- 4.34.31 During the course of the examination, these requirements were revised to the satisfaction of all parties through updates to the draft DCO by the Applicant.
- 4.34.32 ExA is satisfied that the mitigation measures embedded in the design of the generating station and those secured through draft DCO Requirements 5, 6, 13 and 15 will provide the necessary controls with regard to water quality and resources.

### **4.35 HABITATS REGULATIONS**

- 4.35.1 NPS EN-1 Chapter 4.3 Habitats and Species Regulations paragraph 4.3.1 states: *"Prior to granting a development consent order, the IPC must, under the Habitats and Species Regulations ... consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects ... The Applicant should seek the advice of Natural England and/or the Countryside Council for Wales, and provide the IPC with such information as it may reasonably require to determine whether an Appropriate Assessment is required. In the event that an Appropriate Assessment is required, the Applicant must provide the IPC with such information as may reasonably be required to enable it to conduct the Appropriate Assessment. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects"*.
- 4.35.2 The Applicant addressed the Habitat Regulations in its ES Appendix 14A *Habitats Regulation Assessment Screening Report* [AD-080].
- 4.35.3 In this document, the Applicant concludes that: *"There would be no Likely Significant Effect, either alone or in-combination, upon European Sites as none occur within 20 km of the Proposed Development, and no effects of the Proposed Development are expected to occur beyond that distance. Given this, an Appropriate Assessment is not required"*.
- 4.35.4 The Applicant's conclusion is supported by a SoCG agreed with NE [AD-088].
- 4.35.5 This position was confirmed by NE in its Relevant Representation [RR-11], where NE stated its overall position to be that it had no objection to the Proposed Development as *"There were no European sites,*

*Ramsar sites or nationally designated landscapes located within the vicinity of the project that could be significantly affected".*

- 4.35.6 Given these findings and having regard to paragraph 4.3.1 of NPS EN-1, ExA is satisfied that there is sufficient evidence to allow the Secretary of State to conclude that the Proposed Development is not likely to have a significant effect on any European site and for any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects.
- 4.35.7 Furthermore, in accordance with the same paragraph of NPS EN-1, sufficient information has been provided for the Secretary of State to determine that an Appropriate Assessment is not required.

#### **4.36 COMPULSORY ACQUISITION AND RELATED MATTERS**

- 4.36.1 Compulsory acquisition requirements are specified in Part 7, Chapter 1, s.122 – 134 of the Planning Act 2008 (as amended).
- 4.36.2 The Applicant has made no request for compulsory acquisition powers within the draft DCO.
- 4.36.3 All land specified within the draft Order limits is vested as freehold owner in SSE Generation Limited, a 50-50 joint partner organisation within the Applicant, Multifuel Energy Limited. No other land is required to undertake the Proposed Development.

#### **STATEMENT OF REASONS**

- 4.36.4 In Clause 1.21-1.24 of the Statement of Reasons [AD-010], the Applicant stated: *"In the case of the subject Application, the Applicant has negotiated to acquire the necessary interests and rights in land for the Proposed Development, and the Applicant has an option agreement to enter into a lease for the land within the Order limits that is within the control of SSE, while the draft DCO will provide the necessary rights in respect of the other land within the Order limits.*
- 4.36.5 *The only land outside SSE's control that is within the Order limits encompasses a corridor of land along an existing street (known as Kirkhaw Lane) under which it may be necessary to install a foul water connection for the Proposed Development. In respect of this, Article 15 of the draft DCO 'Rights under or over streets' (Application Document Ref. No. 2.1) would provide the Applicant with the ability to enter on and appropriate so much of the subsoil beneath Kirkhaw Lane that may be required for the purposes of installing this connection, removing the need for the Applicant to seek any compulsory purchase powers through the DCO.*
- 4.36.6 The Applicant stated that the draft DCO was not seeking compulsory purchase powers, and all land required for the Proposed Development would be acquired through private treaty or under alternative measures. A Statement of Reasons was not required. However, it was

considered beneficial to provide such a statement to explain how the Proposed Development relates to the existing landholders and how the third party interests would be treated. The Statement of Reasons also confirmed that, where agreements for acquisition by private treaty had been secured, the Applicant would not seek to rely on compulsory purchase powers. Those parcels of land were though still included within the Order limits as part of the Order land.

- 4.36.7 Under the heading of Ownership of the Land, the Applicant stated in clauses 3.16-20 of the Statement of Reasons [AD-010]: "*The Book of Reference (Application Document Ref. No. 3.1) and the Land Plan (Application Document Ref. No. 4.3) identify those persons with an interest in the Order land.*"
- 4.36.8 *No residential properties are to be acquired as part of the Proposed Development. It will not be necessary to extinguish the rights of the four third parties along the unnamed road leading from Stranglands Lane. These rights are identified in the Book of Reference.*
- 4.36.9 Article 15 of the draft Order '*Rights under or over streets*' would provide the Applicant with the ability to enter on and appropriate "*so much of the subsoil beneath Kirkhaw Lane as may be required for installing the foul water connection*". However, the Applicant also intends to apply to WMDC as highway authority for a Section 50 Licence under the New Roads and Street Works Act 1991 to provide for this connection. This would remove the need to rely upon Article 15. However, Article 15 has been retained within the draft Order as the Section 50 Licence has not yet been obtained.
- 4.36.10 The Applicant concludes that it: "*does not therefore need to acquire any interests from the current landowners compulsorily*".
- 4.36.11 The examination in this case required the ExA to confirm that the Applicant was indeed not seeking compulsory acquisition powers.
- 4.36.12 ExA also had to satisfy himself that the Applicant had, or would be able to acquire, all necessary rights over the land within the Order limits.
- 4.36.13 As noted above, the Applicant has clearly stated that it is not seeking compulsory acquisition powers, and no such powers are sought within the draft DCO.

#### **PRIVATE TREATIES AND LEASES**

- 4.36.14 In Q3.1 of the ExA's first questions [PrD-05], ExA asked the Applicant to identify the status of the private treaty or alternative measures for acquiring all necessary land from SSE Generation Limited within the DCO.
- 4.36.15 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that SSE Generation Limited, as freehold owner of the

Ferrybridge site, had agreed to grant a lease to the Applicant for the construction and operation of the Propose Development.

- 4.36.16 In ExA's Agenda Item 21 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to state the position between itself and SSE Generation Limited with regard to the granting of a lease to the Applicant for the construction and operation of the Proposed Development.
- 4.36.17 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that the landowner, SSE Generation Limited, had issued a letter of comfort confirming that terms had been agreed and that the Parties had proposed to enter into agreements. The Parties intended to enter into an Agreement for Lease, followed by a Construction Lease and finally an Operating Lease. The Applicant pointed out that SSE Generation Limited was also a 50/50 joint venture partner of the Applicant, Multifuel Energy Limited. As such SSE Generation was incentivised to grant the necessary land rights and accordingly, on this basis, rights of compulsory acquisition were not being sought through the DCO.

#### **BOOK OF REFERENCE - PART 2 CLAIMANTS**

- 4.36.18 In Q3.3 of the ExA's first questions [PrD-05], ExA noted that Category 3 in Part 2 of the BoR [D2-007] had been divided into two columns (s.10 Compulsory Purchase Act 1965 and Part 1 Land Compensation Act 1973). ExA pointed out that the definition of "relevant claim" in s.57(6) of Planning Act 2008 had been amended in 2012 to include claims under s.152(3) of Planning Act 2008, and asked the Applicant how this had been taken into account.
- 4.36.19 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it had taken s.152(3) into account, and no parties had been identified which held valid grounds for a claim.

#### **BOOK OF REFERENCE - CROWN LAND**

- 4.36.20 In Q3.5 of the ExA's first questions [PrD-05], ExA pointed out that Part 4 of the BoR [D2-007] indicated that the Order land included Crown land, but there were no articles related to this in the draft DCO. ExA asked the Applicant whether it intended to include additional DCO articles to address this issue (ref advice which had been previously provided on this point <http://infrastructure.planningportal.gov.uk/legislation-and-advice/register-of-advice/?ipcadvice=2ff39f4609>).
- 4.36.21 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, in its opinion, no articles relating to Crown land were required in this instance.
- 4.36.22 ExA is satisfied that no compulsory acquisition powers are being sought by the Applicant within the draft DCO, and mechanisms are being pursued by the Applicant to secure the necessary rights over the

land within the Order limits to be able to undertake the Proposed Development.

## 5 THE EXAMINING AUTHORITY'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

- 5.0.1 In determining the application in accordance with s.104 of the Planning Act 2008 (as amended), the Secretary of State must have regard to any relevant National Policy Statements, Local Impact Reports, prescribed matters and other matters considered to be relevant to the decision.
- 5.0.2 The need for proposals of this nature is set out in Government policy in NPS EN-1.
- 5.0.3 ExA has set out his reasons on each of the matters in Chapter 4. In summary, ExA's conclusions on the main issues are that ExA is satisfied on the following:
- (1) **The Development.** The development would be secured through the recommended draft DCO Part 2: Principal Powers, Part 3: Supplementary Powers, and Part 4: Miscellaneous and General. Schedule 1 specifies The Authorised Development in terms of its component Works, Schedule 2 contains the Requirements that secure various aspects of the development as determined through the examination, and Schedules 3 and 4 detail the maximum and minimum building dimensions respectively. Schedule 5 identifies the streets subject to street works, Schedule 6 identifies access to works and Schedule 7 states the procedure for approvals required by the requirements.
  - (2) **Design Approach.** The design of the Proposed Development has been set out in the application as far as possible at this stage. The design approach accords with the aims of NPS EN-1 and NPS EN-3 and the detailed aspects of the design for the proposal would be subject to control by the relevant local planning authorities through the requirements. The design of the Proposed Development is sufficiently fixed to enable the assessment of environmental effects in accordance with the Regulations (i.e. that it covers the 'Rochdale envelope' issue).
  - (3) **Air Quality and Pollution.** The proposal would not have any unacceptable effects in terms of air quality, subject to consent being granted for an Environmental Permit, for which an application has been made and is well advanced. Mitigations embedded in the design of the generating station, together with those within Requirements 37 *Air Quality Emissions Control* and 38 *Air Quality Monitoring* would secure acceptable mitigation and control for air quality and pollution.
  - (4) **Landscape and Visual Amenity.** The proposal would not be of a size and scale to have a significant adverse impact in terms of the landscape and visual amenity. The FM2 Proposed Development would be built alongside the FM1 development and both are within the site of the visually dominant coal-fired power station with its significantly larger buildings and cooling towers. Nevertheless, mitigations embedded in the design of the generating station, together with those within Requirements 7

*Landscape Provision and 8 Landscape Implementation and Maintenance* would secure acceptable mitigation and control for landscape and visual amenity.

- (5) **Transport and Traffic.** The proposal would not have an unacceptable adverse impact on existing transport networks including traffic routing and management, highway safety and the environmental impact of traffic. Measures embedded in the design of the generating station, together with those within Requirements 18 *CEMP*, 19 *Construction Traffic Routing and Management Plan*, 20 *Construction Hours*, and 32 *Operational Traffic Routing and Management Plan* would secure acceptable mitigation and control for traffic and transport.
- (6) **Noise, Disturbance and Vibration.** The proposal would not give rise to significant adverse noise, disturbance and vibration. Requirements 23 *Control of Noise During Construction* and 24 *Control of Operational Noise* would provide acceptable mitigation and control for noise, disturbance and vibration during the construction and operational phases respectively.
- (7) **Flood Risk.** No part of the authorised development may commence until a scheme for the mitigation of flood risk during the construction and operation of that part has been submitted to and, after consultation with the EA, approved by the planning authority. Measures embedded in the design of the generating station, together with those within Requirement 14 *Flood Risk Mitigation* would provide acceptable mitigation against flood risk. Mitigation for risks to water quality would be secured through measures in Requirements 13 *Surface and Foul Water Drainage*, 14 *Contaminated Land and Groundwater* and 18 *CEMP*.
- (8) **Biodiversity and Protected Wildlife Conservation Sites.** There is sufficient evidence to allow the Secretary of State to conclude that the Proposed Development is not likely to have a significant effect on a European site or any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Furthermore, in accordance with the NPS EN-1, sufficient information has been provided for the Secretary of State to determine that an Appropriate Assessment is not required. Based on NE's representations, a European Protected Species licence under the Habitats Regulation is not required for the Proposed Development. Requirement 17 *Biodiversity Enhancement and Management Plan* would secure the submission of plans for biodiversity management for consultation with Yorkshire Wildlife Trust and NE, as well as approval of appropriate measures by the local planning authority. This provides acceptable mitigation and control.
- (9) **Waste Management.** The Proposed Development would make appropriate arrangements for waste management at the construction, operational and decommissioning stages. It complies with NPS EN-3 in providing sustainable waste management, moving waste up the hierarchy and contributing to a network of installations to deal with waste in the north of England. Measures embedded in the design of the generating



station, together with those within Requirements 41 *Waste Hierarchy Scheme* and 42 *Waste Management – Construction and Operational Waste* would secure the necessary mitigation and control, the management of which would also be controlled by the Environmental Permit.

- (10) **Historic Environment.** The Proposed Development would not have an unacceptable adverse impact on the historic environment. Mitigation measures would only be required for archaeology, and these would be secured through Requirement 16 *Archaeology*, with the West Yorkshire Archaeology Advisory Service in a consultative capacity and the planning authority with the approval role.
- (11) **Combined Heat and Power (CHP).** As required by NPS EN-1, the proposal would make provision for CHP. Requirement 40 *CHP* would secure the fact that the authorised development may not be brought into commercial use until the planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems if they should become viable.
- (12) **Grid Connection.** DCO Schedule 1, Work No. 2, includes three alternatives for a grid connection. The selection of one of these alternatives would be the subject of the detailed design. All three alternatives are within the Order limits, and the FM2 generating station would be on the site of two existing generating stations, so grid connection is not expected to be problematic. An environmental assessment has been undertaken for each design option.
- (13) **Health, Safety and Security.** The proposal would comply with the guidance in NPS EN-1, in terms of health and safety, safety and security, aviation safety, health and land stability. Measures embedded in the design of the generating station, together with those within Requirements 44 *Aviation Warning Lighting*, 45 *Air Safety* and 46 *Site Security* would secure the necessary mitigation and control.
- (14) **Socio-Economic Impact.** The Proposed Development would have a positive socio-economic impact, especially in terms of regeneration, employment, skills and education. The proposal would comply with the guidance on site selection in NPS EN-1. It would also be in accordance with development plan policies for land use in the local area. Requirement 48 *Employment, Skills and Training Plan* was included in the DCO as a result of dialogue between the Applicant and the planning authority, WMDC, and would secure the fact that Work No. 1 may not commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to, and approved by, the planning authority.

5.0.4 ExA's overall conclusion on the case for development consent for the scheme is based on his assessment of these matters, including the

strong levels of agreement between most bodies and the limited level of objection.

- 5.0.5 ExA's view is that the case for development consent, based on the draft DCO in Appendix A to this document, is well made.

## **6 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **6.0 INTRODUCTION**

- 6.0.1 The draft DCO constitutes the consent sought for the Proposed Development. It sets out the authority to be given to the undertaker, including commitments that the Applicant must accept to carry out the development, the further approvals that are required before particular works can commence, the protective provisions necessary to safeguard the interests of other parties and requirements similar to planning conditions to be met when implementing the consent.
- 6.0.2 A draft DCO was submitted as part of the application [AD-006], accompanied by the required Explanatory Memorandum [AD-007]. Where the DCO applies, modifies or excludes a statutory provision under s.120 (5) (a) of the PA2008, s.117(4) of the same Act requires the DCO to be in the form of a statutory instrument. The draft DCO includes such provision and is in the form of a statutory instrument.
- 6.0.3 A revised draft DCO [D2-003] was submitted by the Applicant at Deadline 2 (17 February 2015), together with a revised BoR [D2-007] and Explanatory Memorandum [D2-008/009].
- 6.0.4 An Issue-Specific Hearing on the DCO was held on 18 March 2015 with updates to the draft DCO being reported by the Applicant and outstanding issues on the Articles and Requirements tabled by ExA [HG-005]. The final draft DCO [D4-004] was submitted by the Applicant at Deadline 4 (02 April 2015), together with a revised Explanatory Memorandum [D4-002].
- 6.0.5 Where particular provisions, requirements or schedules are not mentioned, then the Secretary of State can be clear that ExA is satisfied that the measures proposed are appropriate. Unless otherwise stated, ExA's comments below relate to the Applicant's final draft DCO [D4-004], carried forward with minor modifications into ExA's recommended DCO at Appendix A to this document.

### **6.1 ARTICLES**

- 6.1.1 The articles set out the principal powers to be granted if consent is given. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remained a starting point for the consideration of the draft DCO and a comparison with them has been provided as part of the application [AD-008]. Precedent cases have also been considered where appropriate.

## **ARTICLE 2 – INTERPRETATION**

- 6.1.2 Most of the changes made to Article 2 are minor and are corrections, clarifications, updates or additions to the original version submitted by the Applicant, some in response to ExA's questions on drafting. However, during the course of the examination, a number of questions were asked about some the definitions in the interpretation section.
- 6.1.3 In the Applicant's first draft DCO [AD-006], submitted with the application, the definition of "*the authorised development*" included the development set out in Schedule 1 but also "*any other development authorised by this Order which is development within the meaning of section 32 of the 2008 Act*". This potentially placed legal risk on the decision-making Secretary of State, because it is not clear exactly what would be consented by the Order, if granted.
- 6.1.4 In Q2.1 of the ExA's first questions [PrD-05], ExA asked the Applicant what other developments it envisaged would be authorised by the Order, and for the Applicant to justify the inclusion of these words within the draft DCO.
- 6.1.5 In the Applicant's submission at Deadline 1 [D1-011], the Applicant agreed to delete these words in a revised DCO, and this was done at Deadline 2 [D2-003].
- 6.1.6 Similarly, with regard to ExA's Q2.2, the Article 2 definition of "*maintain*" and Article 7 "*power to maintain*" were widely worded, giving the undertaker the power to adjust, alter or replace the authorised development. It was therefore not clear what was being consented and it was also not clear that the maintenance authorised had been fully assessed for its possible environmental effects. The definitions needed to be restricted to works that had been assessed in the Environmental Statement. Following ExA's first questions, the Applicant agreed to amend these definitions, and this was done at Deadline 2 [D2-003].
- 6.1.7 The definition of "*statutory undertaker*", referred to the Planning Act 2008 Sections 128 and 129, which have been repealed and should be removed from the definition. The Applicant agreed to remove these references, and this was done at Deadline 2 [D2-003].
- 6.1.8 In ExA's view, the final draft DCO at Deadline 4 [D4-004] addressed the above matters and no further action is necessary.

## **ARTICLE 5 - LIMITS OF DEVIATION**

- 6.1.9 The Applicant's first draft DCO [AD-006] included the terms "*inwards*" and "*outwards*" for lateral deviation. No definition was given in the DCO, although paragraph 5.8 of the Explanatory Memorandum made it clear that this was intended to refer to a reduction or increase in the size of the relevant part of the Authorised Development.

- 6.1.10 In Q2.4 of the ExA's first questions [PrD-05], ExA asked the Applicant to clarify these terms, and did so again under Agenda Item 1 at the Issue-Specific Hearing on the DCO [HG-005].
- 6.1.11 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that it considered the DCO and Explanatory Memorandum as drafted were already entirely consistent, and that the ordinary meanings of the words "inwards" and "outwards" in this context were sufficiently clear and did not require definition. The Applicant stated that these definitions had been previously used in legislation in the same context without definition, and therefore the drafting change suggested was not considered necessary. Nevertheless, the Applicant made the requested change within the revised draft DCO at Deadline 4 [D4-004].
- 6.1.12 In ExA's view, the draft DCO at Deadline 4 [D4-004] addressed the above matters and no further action is necessary.

#### **ARTICLE 7 - POWER TO MAINTAIN THE AUTHORISED DEVELOPMENT**

- 6.1.13 See commentary under Article 2 above, which also refers to Article 7.

#### **ARTICLE 8 - TRANSFER OF THE BENEFIT OF THE ORDER**

- 6.1.14 The Applicant's first draft DCO [AD-006] removed the need for Secretary of State consent to transfer the benefit of the order in specific situations (to the holder of a generation/transmission/distribution/supply/ interconnector licence, to another group company, or to a street authority). This was explained in the Explanatory Memorandum, but no justification was given.
- 6.1.15 In Q2.5 of the ExA's first questions [PrD-05], ExA asked the Applicant to justify its reason for this approach.
- 6.1.16 In the Applicant's submissions at Deadline 2, the Applicant amended the wording in the revised draft DCO [D2-003], meaning that the overall benefit of the order could be transferred with the Secretary of State's consent to a transmission/ distribution licence holder. The specific benefits relating to street works could also be transferred to a street authority.
- 6.1.17 In ExA's Agenda Item 2 at the Issue-Specific Hearing on the DCO [HG-005], ExA also proposed minor typographical amendments and these were reflected in the Applicant's revised draft DCO at Deadline 4 [D4-004].
- 6.1.18 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the transfer of benefit of the Order.

## **ARTICLE 18 - DEFENCE TO PROCEEDINGS IN RESPECT OF STATUTORY NUISANCE**

- 6.1.19 Section 4.18 *Common Law Nuisance and Statutory Nuisance* above summarises the examination with regard to the defence to nuisance.
- 6.1.20 As stated in Section 4.18, this was the subject of some debate during the examination. The Applicant's first draft DCO [AD-006] removed all liability for claims for nuisance arising from the operation of the development.
- 6.1.21 WMDC and the EA as Interested Parties expressed concerns about the extent of the defence sought, since the Applicant had stressed throughout that all necessary mitigation measures against nuisance were secured through requirements in the draft DCO.
- 6.1.22 As a result of various submissions and questioning at the Issue-Specific Hearing on the DCO on 18 March 2015, the Applicant amended the drafting of Article 18 in the draft DCO at Deadline 4.
- 6.1.23 ExA is satisfied that Article 18 as drafted in the draft DCO at Deadline 4 [D4-004] provides an appropriate level of defence against common law and statutory nuisances.

## **6.2 SCHEDULE 1: THE AUTHORISED DEVELOPMENT**

### **AMBIGUITY**

- 6.2.1 In the Applicant's first draft DCO [AD-006], the drafting left some ambiguity as to which additional works or associated development might be envisaged by the Applicant.
- 6.2.2 In ExA's Agenda Item 5 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant to state what other works might be required, other than those listed as (a)-(m) following the text on Work No 4. If none could be identified, the text "*any other works ... environmental statement*" should be removed as being too vague. If any could be identified, they should be added to the list.
- 6.2.3 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that it had listed all the further works that it currently believed would be required at Schedule 1 of the draft DCO. However, it considered that some limited flexibility was appropriate. The draft DCO had therefore been amended to follow the approach taken in the confirmed Knottingley DCO - that is to list all the known further works, followed by a 'catch-all provision' as follows: "*...and to the extent that they do not form part of any such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.*"

## **DEFINITION OF WORK NO. 1**

- 6.2.4 In the Applicant's first draft DCO [AD-006], the Applicant stated in Schedule 1 that the generating station would be fuelled "primarily" by waste derived fuels, and Requirement 3 *Fuel Type* stated that the fuel type would be restricted to the types set out in the Environmental Permit (which had not yet been produced and agreed). This led to a potential conflict (or at least a lack of clarity).
- 6.2.5 ExA needed assurance from the Applicant that the worst case had been assessed in the Environmental Statement, so that whatever was consented and finally built (if consent is granted) was within the parameters assessed in the Environmental Statement.
- 6.2.6 In Q2.9 of the ExA's first questions [PrD-05], ExA asked the Applicant to quantify in the definition of Work No.1 the extent of use of waste derived fuel and the extent of all other categories of fuel to be used in accordance with the levels of such fuel usage assessed in the Environmental Statement. ExA also asked which fuels other than waste derived fuels might be used, in what proportions of the total fuel consumption, and how these had been assessed within the Environmental Statement.
- 6.2.7 In the Applicant's submission at Deadline 1 [D1-011], the Applicant cited gas oil as the necessary start up fuel to achieve and maintain the operating temperature, and proposed wording to amend Requirement 3 to make clear the circumstances in which non-waste derived fuel may be used.
- 6.2.8 The necessary wording was added to Requirement 3 in the revised draft DCO at Deadline 2 [D2-003].
- 6.2.9 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the fuel types to be used.

## **6.3 SCHEDULE 2: REQUIREMENTS**

### **REQUIREMENT 3 – FUEL TYPE**

- 6.3.1 See commentary under Schedule 1, the Authorised Development - Definition of Work No. 1, which also refers to Requirement 3.

### **REQUIREMENT 5 – DESIGN OF FUEL BUNKER**

- 6.3.2 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to the design of the fuel bunker.
- 6.3.3 In its Relevant Representation [RR-18], the EA recommended amended wording to Requirement 5 to secure an approved

groundwater table level survey to inform the design of the fuel storage bunker.

- 6.3.4 The Applicant agreed with EA's proposed wording and included this wording in a revised Requirement 5 in the draft DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004].
- 6.3.5 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the design of the fuel bunker.

### **REQUIREMENT 6 – PRE-DEVELOPMENT GROUNDWATER TABLE LEVEL SURVEY**

- 6.3.6 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to the need for a pre-development groundwater table level survey.
- 6.3.7 In its Relevant Representation [RR-18], the EA recommended amended wording to Requirement 6 to secure clarity on how the groundwater table level survey should be undertaken.
- 6.3.8 The Applicant agreed with EA's proposed wording and included this wording in a SoCG between the Applicant and the EA at Deadline 1 [D1-013], as well as a revised Requirement 6 in the DCO at Deadline 2 [D2-003] and Deadline 4 [D4-004]. Although the Applicant also added a tailpiece to Requirement 6, the EA agreed with the wording [CoRR-06/07].
- 6.3.9 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the groundwater table level survey.

### **REQUIREMENT 7 – PROVISION OF LANDSCAPING**

- 6.3.10 Section 4.26 *Landscape and Visual Impacts* above summarises the examination with regard to the provisions for landscaping in the Proposed Development.
- 6.3.11 During the examination, a number of submissions were made concerning Requirements 7, 8 and 17. WMDC proposed revised wording of all three requirements, so that the measures that they secured were appropriately harmonised.
- 6.3.12 The Applicant accepted the proposals and reflected them in its draft DCO at Deadline 4 [D4-004].
- 6.3.13 Agreement between the Applicant and WMDC was recorded in a SoCG at Deadline 5 [D5-001/002].
- 6.3.14 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the provision of landscaping.



### **REQUIREMENT 8 - IMPLEMENTATION AND MAINTENANCE OF LANDSCAPING**

- 6.3.15 See the commentary under Requirement 7 above for references to Requirement 8, for which the position is covered by that commentary.
- 6.3.16 ExA is satisfied that the draft DCO at Deadline 4 secures the necessary mitigation and control with regard to the implementation and maintenance of landscaping.

### **REQUIREMENT 13 - SURFACE AND FOUL WATER DRAINAGE**

- 6.3.17 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to surface and foul water drainage.
- 6.3.18 In its Relevant Representation [RR-18], the EA called for tighter wording to Requirement 13 to secure mitigation for potential pollution to surface water.
- 6.3.19 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that through the SoCG agreed between the EA and the Applicant [D1-013], amended wording of draft Requirement 13 had been agreed, and would be included in the revised draft of the DCO at Deadline 2, which it was [D2-003].
- 6.3.20 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to surface and foul water drainage.

### **REQUIREMENT 14 – FLOOD RISK**

- 6.3.21 Section 4.20 *Flood Risk* above summarises the examination with regard to flood risk.
- 6.3.22 During the examination, the EA stated that, given that the flood risk detail was to be agreed by the EA and local planning authority, and was to be consistent with the principles and strategy set out in the Applicant's Flood Risk Assessment, further detail did not need to be included within Requirement 14.
- 6.3.23 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to flood risks.

### **REQUIREMENT 15 - CONTAMINATED LAND AND GROUNDWATER**

- 6.3.24 Section 4.34 *Water Quality and Resources* above summarises the examination with regard to contaminated land and groundwater.

- 6.3.25 In its Relevant Representation [RR-18], the EA called for an extra requirement, Requirement 15, to secure mitigation with regard to potential pollution to groundwater due to contaminated land.
- 6.3.26 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 15, and that the wording was documented within a SoCG with EA [D1-013].
- 6.3.27 The agreed wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].
- 6.3.28 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to contaminated land and groundwater.

### **REQUIREMENT 16 - ARCHAEOLOGY**

- 6.3.29 Section 4.23 *Historic Environment* above summarises the examination, with regard to archaeological matters.
- 6.3.30 A SoCG [AD-095] between the Applicant and the WYAAS was tabled with the application.
- 6.3.31 The SoCG stated that it had been agreed that the Proposed Development would not have a significant effect upon any designated heritage assets or their settings, and that the Applicant must produce a written scheme of investigation in consultation with WYAAS for approval prior to the commencement of the Proposed Development.
- 6.3.32 The examination confirmed the fact that the SoCG remained agreed.
- 6.3.33 In the Applicant's revised draft DCO at Deadline 2 [D2-003], the Applicant amended the text of Requirement 16 to include details of the programme of archaeological investigation work that had to be produced, consulted with WYAAS and approved by the planning authority before the authorised development could commence.
- 6.3.34 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to archaeology.

### **REQUIREMENT 17 - BIODIVERSITY ENHANCEMENT AND MANAGEMENT PLAN**

- 6.3.35 Section 4.12 *Biodiversity, Biological Environment, Ecology and Geological Conservation* above summarises the examination with regard to biodiversity enhancement and management.
- 6.3.36 NE stated its overall position to be that it had no objection to the project, since there were no European designated sites, Ramsar sites or nationally designated landscapes located within the vicinity of the

project that could be significantly affected, and the project was unlikely to have a significant impact on the nearby Fairburn & Newton Ings Site of Special Scientific Interest. NE also stated that the Proposed Development site currently supported habitats of negligible ecological interest and all issues relating to protected species had already been addressed. NE welcomed the Biodiversity Enhancement and Management Plan as secured through proposed Requirement 17.

- 6.3.37 The YWT expressed concerns in a number of areas and challenged data presented in the application. During the examination, these concerns were explored, and agreement was reached between the Applicant and YWT, subject to the amendment of the landscaping and biodiversity strategies and the commitment to engage with YWT during the finalisation of any detailed landscaping scheme.
- 6.3.38 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to biodiversity enhancement and management.

#### **REQUIREMENT 18 - CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN**

- 6.3.39 Requirement 18 secures the fact that the authorised development may not commence until a CEMP has been submitted to and, after consultation with SDC, approved by the planning authority.
- 6.3.40 Requirement 18 has been amended through the examination to include measures for:
- the protection of any statutory protected species found to be present on the Order land during construction
  - the mitigation measures included in Chapter 9 of the Environmental Statement
  - incorporation of a scheme for handling complaints received from local residents, businesses and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.
- 6.3.41 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the CEMP.

#### **REQUIREMENT 19 – CONSTRUCTION TRAFFIC ROUTING AND MANAGEMENT PLAN**

- 6.3.42 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to traffic and transport:
- Baseline Conditions
  - Construction Traffic

- Operational Traffic
  - Travel Plan for Operational Staff
  - Worst Case Calorific Values for Transported Fuel
  - Sustainable Fuel Transport Management Plan
  - Road Classifications
  - Mitigation Measures Secured Outside of the FM2 DCO
  - Royal Mail Collection, Transport and Delivery
  - Impact on the Rail Network.
- 6.3.43 Mitigation measures described in Chapter 7 of the ES would be secured by Requirement 19 as well as Requirements 32-35 in the draft DCO.
- 6.3.44 Requirement 19 secures the development of a Construction Traffic Routeing and Management Plan before the Proposed Development may commence. In the Applicant's revised draft DCO submission at Deadline 2 [D2-003], the Applicant included a new clause 19(3)(g) *"details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work"*.
- 6.3.45 The Applicant stated that Requirement 19 had been agreed with WMDC and that this agreement was documented in the SoCG [D5-001/002] submitted for Deadline 5.
- 6.3.46 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the Construction Traffic Routeing and Management Plan.

### **REQUIREMENT 20 – CONSTRUCTION HOURS**

- 6.3.47 Section 4.27 *Noise and Vibration* above summarises the examination with regard to noise and vibration during construction hours.
- 6.3.48 As a result the Applicant revised the wording of Requirement 20, as well as Requirements 18 *CEMP* and 23 *Control of Noise During Construction*.
- 6.3.49 These revised requirements now secure more provisions for:
- consultation on plans and schemes with local authorities
  - corrective action in relation to substantiated complaints relating to emissions of noise
  - noise level limits
  - revised construction hours
  - provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise.
- 6.3.50 With noise mitigations and controls secured through amended Requirements 18, 20 and 23 of the revised draft DCO to the satisfaction of the planning authority that will have to enforce them,

and with the EA controlling the Environmental Permit in which these matters will be examined in more detail, ExA is satisfied that the necessary controls with regard to construction hours are in place.

### **REQUIREMENT 21 – PILING AND PENETRATIVE FOUNDATION DESIGN**

- 6.3.51 In the EA's Relevant Representation [RR-18], EA requested amendments to Requirement 21 to ensure that a relevant risk assessment was undertaken prior to the commencement of the development to secure mitigation for groundwater risks.
- 6.3.52 In Q2.18 to the ExA's first questions [PrD-05], ExA asked the Applicant what its response was to the EA's recommended amendments to DCO Requirement 21.
- 6.3.53 In the Applicant's submission at Deadline 1 [D1-011], the Applicant stated that, subject to minor changes, it had adopted the wording proposed by the EA for Requirement 21, and that the wording was documented within a SoCG with the EA [D1-013]. This was confirmed in the EA's submission at Deadline 1 [D1-006].
- 6.3.54 The agreed wording was included in the Applicant's revised draft DCO at Deadline 2 [D2-003].
- 6.3.55 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to piling and penetrative foundation design.

### **REQUIREMENT 23 (ORIGINALLY 22) - CONTROL OF NOISE DURING CONSTRUCTION**

- 6.3.56 Section 4.27 *Noise and Vibration* above summarises the examination with regard to noise and vibration control.
- 6.3.57 As a result, the Applicant amended draft Requirement 23 to secure more consultation and a tighter programme of noise monitoring during the construction of the Proposed Development.
- 6.3.58 See also Requirement 20 *Construction Hours* above, where other aspects of noise control are secured.
- 6.3.59 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the control of noise during construction.

### **REQUIREMENT 24 (ORIGINALLY 23) - CONTROL OF OPERATIONAL NOISE**

- 6.3.60 Section 4.27 *Noise and Vibration* above summarises the examination with regard to the control of operational noise.
- 6.3.61 As a result, the Applicant introduced a new Requirement 24 *Control of Operational Noise* to secure a mechanism by which to monitor and control noise generated by the authorised development during its operational phase.
- 6.3.62 See also the commentary on Article 18: *Defence to Proceedings in Respect of Statutory Nuisance* above.
- 6.3.63 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the control of operational noise.

### **REQUIREMENTS 25-28 (ORIGINALLY 24-27) - CONTROL OF ODOUR, DUST, SMOKE AND STEAM EMISSIONS**

- 6.3.64 Section 4.19 *Dust and Other Potential Nuisance* above summarises the examination with regard to the control of emissions.
- 6.3.65 Requirements 25-28 secure the fact that the authorised development may not be commissioned until a scheme for the management and mitigation of odour, dust, smoke and steam emissions, respectively, has been submitted to and, after consultation with SDC, approved by the planning authority.
- 6.3.66 The requirement to consult with SDC was added during the examination.
- 6.3.67 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the control of emissions.

### **REQUIREMENT 32 (ORIGINALLY 31) - OPERATIONAL TRAFFIC ROUTEING AND MANAGEMENT PLAN**

- 6.3.68 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to traffic and transport routeing and management, including the Operational Traffic Routeing and Management Plan:
- Baseline Conditions
  - Construction Traffic
  - Operational Traffic
  - Travel Plan for Operational Staff
  - Worst Case Calorific Values for Transported Fuel
  - Sustainable Fuel Transport Management Plan

- Road Classifications
- Mitigation Measures Secured Outside of the FM2 DCO
- Royal Mail Collection, Transport and Delivery.

6.3.69 Mitigation measures described in Chapter 7 of the ES would be secured by draft Requirement 32, as well as other requirements in the draft DCO [D4-004].

6.3.70 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the Operational Traffic Routeing and Management Plan.

**REQUIREMENT 33 (ORIGINALLY 32) - TRAVEL PLAN: OPERATIONAL STAFF**

6.3.71 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to traffic routeing and management, including the Travel Plan for Operational Staff.

6.3.72 Mitigation measures described in Chapter 7 of the ES would be secured by draft Requirement 33 in the draft DCO.

6.3.73 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the travel plan for operational staff.

**REQUIREMENT 35 (ORIGINALLY 34) - SUSTAINABLE FUEL TRANSPORT MANAGEMENT PLAN**

6.3.74 Section 4.32 *Traffic and Transport* above summarises the examination with regard to various aspects relating to the traffic and transport routeing and management, including Sustainable Fuel Transport and Management.

6.3.75 Mitigation measures described in Chapter 7 of the ES would be secured by Requirement 35 in the draft DCO.

6.3.76 Requirement 35 was significantly amended as a result of the examination to include:

- a requirement for the undertaker to conduct an assessment of the costs of upgrading the existing wharf facility at the Ferrybridge Power Station site, including a description of the refurbishment work required and a breakdown of the costs of that work
- Every five years during the operation of the authorised development, the undertaker must periodically carry out an appraisal of the viability of upgrading the existing wharf facility in the context of the evaluation of the potential for fuel and ash transportation by water.

6.3.77 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the *Sustainable Fuel Transport and Management Plan*.

**REQUIREMENT 37 (ORIGINALLY 36) - AIR QUALITY:  
EMISSIONS REDUCTION**

6.3.78 Section 4.11 *Air Quality and Emissions* above summarises the examination with regard to air quality emissions reduction:

- Potential impacts arising from emissions and air pollution
- Emission levels
- Cumulative and combined effects
- Operation of diesel generators
- FM2 and FM1 construction timings.

6.3.79 The design of the Proposed Development includes embedded mitigations, and emissions reductions are further secured through draft DCO Requirement 37, which was amended for clarity during the examination.

6.3.80 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to air quality emissions reduction.

**REQUIREMENT 38 (ORIGINALLY 37) - AIR QUALITY  
MONITORING**

6.3.81 Section 4.11 *Air Quality and Emissions* above summarises the examination with regard to air quality emissions monitoring:

- Use of FM1 air quality monitoring information
- Justification for the absence of background monitoring data
- Assumptions for construction traffic.

6.3.82 The design of the Proposed Development includes embedded mitigations, and emissions reductions are further secured through draft DCO Requirement 38, which includes the need for the Applicant to develop a scheme of air quality monitoring to be submitted to and, after consultation with SDC, approved by the planning authority.

6.3.83 Requirement 38 was significantly amended during the examination to:

- provide clarity on when the monitoring measurements will be made
- allow the planning authority to give notice to the undertaker that the scheme is to be extended for the period specified in the notice
- ensure that the undertaker provides a report each year to the planning authority within 3 months after the final measurement made in that year.



6.3.84 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to air quality emissions monitoring.

### **REQUIREMENT 43 (ORIGINALLY 42) - DECOMMISSIONING**

6.3.85 In WMDC's submission at Deadline 1, WMDC stated that it had no evidence or reason to believe that the Applicant could not meet the required costs of decommissioning and clean up. However, WMDC stated that Requirement 43 (originally 42) should include a subsection specifying that all decommissioning costs would be met by, and were the responsibility of, the landowner and/or operator of the plant.

6.3.86 In the Applicant's submission at Deadline 2 [D2-002/D2-006], the Applicant's response was that this was not necessary.

6.3.87 In the ExA's Agenda Item 19 at the Issue-Specific Hearing on the DCO [HG-005], ExA asked the Applicant and WMDC to state their positions re WMDC's proposal to include a subsection (6) to Requirement 43 relating to decommissioning responsibility.

6.3.88 In WMDC's submission at Deadline 4 [D4-010], WMDC re-stated its position that the requirement should be amended to cover decommissioning costs.

6.3.89 In the Applicant's submission at Deadline 4 [D4-009], the Applicant stated that Requirement 43 within the revised draft DCO had been amended to make clear that the undertaker must implement the decommissioning scheme as approved and was responsible for the costs of the decommissioning works.

6.3.90 Requirement 43 in the draft DCO at Deadline 4 reflects this position.

6.3.91 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to decommissioning.

### **REQUIREMENT 48 - EMPLOYMENT, SKILLS AND TRAINING PLAN**

6.3.92 Section 4.31 *Socio-Economic Impacts* above summarises the examination with regard to socio-economic matters, including the Employment, Skills and Training Plan.

6.3.93 As a result of dialogue during the examination, the Applicant added Requirement 48 to the draft DCO at Deadline 4 [D4-004 to D4-007]. Under this requirement, Work No. 1 may not commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the planning authority. The approved plan must be implemented and maintained during the construction and operation of Work No. 1.

6.3.94 ExA is satisfied that the draft DCO at Deadline 4 [D4-004] secures the necessary mitigation and control with regard to the Employment, Skills and Training Plan.

#### **6.4 SCHEDULE 7: PROCEDURES FOR APPROVALS**

6.4.1 In the Applicant's first draft DCO [AD-006], the Applicant sought to impose unusual and limited response times on both the Local Planning Authority and Planning Inspectorate/Secretary of State. This was an attempt to substitute the appeal provisions of ss.72, 78 and 79 from the Town and Country Planning Act 1990 for Article 19 and Schedule 7, given that this is the usual approach in DCOs.

6.4.2 In Q2.8 of the ExA's first questions [PrD-05], ExA asked the Applicant to justify why these timeframes had been specified, bearing in mind that recent DCO's that had been made (e.g. Daventry International Rail Freight Terminal) had emphasised that it is generally inappropriate for an Order as secondary legislation to amend primary legislation in such matters. ExA also asked WMDC to state whether it had any concerns over these timescales.

6.4.3 In WMDC's submission at Deadline 4 [D4-010], WMDC proposed alternative response times for some of its actions.

6.4.4 In the Applicant's submission at Deadline 4 [D4-009], the Applicant cited precedents for bespoke response times

6.4.5 In the Applicant's submission at Deadline 5 [D5-003], the Applicant submitted a further response and accepted WMDC's proposed response times of 5 business days at clause 3(2)(a) and (c). The revised draft DCO submitted for Deadline 4 [D4-004] did not incorporate these agreed amendments on the timescales since the agreement was reached after Deadline 4.

6.4.6 The Applicant therefore asked the ExA to make these changes to the draft DCO, which ExA has done in the draft DCO at Appendix A to this document.

6.4.7 The Applicant rejected WMDC's proposed 35 business days instead of the Applicant's 18 business days for clause 3(2)(b) on the grounds that it was a reasonable and achievable period for consultees to notify the planning authority that further information was required in respect of a requirement that they had been consulted upon.

6.4.8 This remained a matter that had not been agreed in the SoCG between the Applicant and WMDC [D5-001/002] at the closure of the examination.

6.4.9 ExA's considered opinion is that 18 business days is indeed adequate for 3(2)(b) and this is therefore unchanged in the draft DCO at Appendix A.

6.4.10 Schedule 7 Paragraph 5(5) of the draft DCO similarly imposes a response time on the Secretary of State. The ExA considers that 10 business days is an unreasonably short period for the SoS to appoint a person to determine the appeal, and therefore that the DCO should be amended to require this to be done "as soon as reasonably practicable". However, the SoS may wish to consider whether it is appropriate to impose a suitable fixed period instead.

## **6.5 CONCLUSION**

6.5.1 In view of all of the above points, ExA concludes that the final draft DCO at Appendix A is appropriate in relation to the proposal, with the possible exception of the point raised under Section 6.4.10 above. ExA therefore recommends that, should consent be given, the Order is made in the form set out in Appendix A.

## **7 SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATION**

### **7.0 INTRODUCTION**

7.0.1 In coming to his overall conclusion, ExA has had regard to the relevant National Policy Statements, local impact reports submitted during the examination, all prescribed matters and all matters that ExA considered were important and relevant to this application.

### **7.1 FINDINGS AND CONCLUSIONS**

7.1.1 Chapter 3 *Legal and Policy Context* outlines the legal and policy context that ExA considers applies to this application.

7.1.2 Chapter 4 *Findings and Conclusions in Relation to Policy and Factual Issues* draws out ExA's findings and conclusions for each of the areas of the examination.

7.1.3 Chapter 5 *The Examining Authority's Conclusion on the Case for Development Consent* summarises each of the topics in Chapter 4 to distil the case for development consent.

7.1.4 Chapter 6 *Draft Development Consent Order* explains the steps leading to the draft DCO in the final form tabled by the Applicant at Deadline 4 [D4-004] and ExA in Appendix A to this document.

7.1.5 ExA has concluded and recommended that if the development consent is granted as recommended, then the order should be made in the form set out in Appendix A. In coming to this view, ExA has taken into account all of the matters raised in the representations and considers that there is no other reason that would lead him to a different conclusion. The draft DCO contains 49 requirements, which will secure a range of conditions relating to the Proposed Development, as agreed by the Applicant as a result of the examination.

7.1.6 In relation to s.104 of the Planning Act 2008, ExA further concludes:

- (a) that making the recommended DCO would be in accordance with relevant NPSs and in particular EN-1
- (b) that in consideration of the other exceptions referred to in s.104 of the Planning Act 2008, ExA finds no reason on the matters before him to demonstrate that deciding the application in accordance with the relevant NPSs would: lead to the United Kingdom being in breach of its international obligations; lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment; or, be otherwise unlawful by virtue of any enactment.

7.1.7 Other consents would be required, notably the Environmental Permit, but, from the SoCG and other submitted evidence, there is no reason,

at this stage, to suggest that these consents would not be granted, as required.

## **7.2 RECOMMENDATION**

- 7.2.1 Therefore, ExA recommends that, for the reasons set out in the above report, the Secretary of State makes the Ferrybridge Multifuel 2 Power Station Order, as set out in Appendix A to this document.

**APPENDIX A**  
**RECOMMENDED DEVELOPMENT CONSENT ORDER**

**2015 No. 9999**

**INFRASTRUCTURE PLANNING, ENGLAND**

**The Ferrybridge Multifuel 2 (FM2) Power Station Order 2015**

*Made* - - - - [date]

*Coming into force* - - [date]

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THE REQUIREMENTS

An application was made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>(a)</sup> made under section 37 of the Planning Act 2008<sup>(b)</sup> for an Order under sections 114, 115, 120, 122 and 140 of that Act.

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the Planning Act 2008.

The Examining authority, having examined the application with the documents that accompanied it and the objections made and not withdrawn, has made a recommendation to the Secretary of State.

The Secretary of State, having considered the recommendation of the Examining authority, has decided to make an Order granting development consent for the development described in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122 and 140 of the Planning Act 2008, makes the following Order:

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(a) S.I. 2009/2264.

(b) 2008 c. 29.



# PART 1

## PRELIMINARY

### Citation and commencement

1.—(1) This Order may be cited as the Ferrybridge Multifuel 2 (FM2) Power Station Order 2015.

(2) This Order comes into force on [date].

### Interpretation

2.—(1) In this Order—

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

“the 1971 Act” means the Banking and Financial Dealings Act 1971(b);

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

“the 1989 Act” means the Electricity Act 1989(d);

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

“the 2008 Act” means the Planning Act 2008;

“the 2010 Regulations” means the Environmental Permitting (England and Wales) Regulations 2010(f);

“the authorised development” means the development and associated development described in Schedule 1 (the authorised development);

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

“business day” means any day except—

(a) Christmas Day;

(b) Good Friday;

(c) a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

(d) any other day that is a Saturday or a Sunday;

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

“the environmental statement” means the environmental statement (including the figures and appendices) submitted with the application for this Order and certified as the environmental statement by the Secretary of State for the purposes of this Order under article 23;

“the FM1 Power Station ” means the Ferrybridge Multifuel 1 (FM1) power station within the Ferrybridge Power Station site for which consent under section 36 of the Electricity Act 1989 was granted in October 2011;

“heavy goods vehicle” means a motor vehicle constructed or adapted to carry or to haul goods of more than 3.5 tonnes in weight;

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

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

“light goods vehicle” means a motor vehicle constructed or adapted to carry or to haul goods of not more than 3.5 tonnes in weight;

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(a) 1961 c. 33.  
(b) 1971 c. 80.  
(c) 1980 c. 66.  
(d) 1989 c. 29.  
(e) 1991 c. 22.  
(f) S.I. 2010/675.

“maintain” includes (i) inspect, repair, adjust, alter, clear, improve, refurbish, reconstruct and decommission and (ii) in relation to a part (but not the whole) of the authorised development, remove, demolish or replace; and “maintenance” and other cognate expressions are to be construed accordingly;

“the Order land” means the land which is within the Order limits;

“the Order limits” means the limits, shown by the red line boundary on the Order plan, within which the authorised development may be carried out;

“the Order plan” means the document certified as the Order plan by the Secretary of State for the purposes of this Order under article 23;

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

“a part” of the authorised development means any part of Works Nos. 1-4;

“the planning authority” means Wakefield Metropolitan District Council, as the planning authority for the area in which the Order land is situated;

“the requirements” means the requirements set out in Schedule 2 (the requirements); and a reference to a numbered requirement is a reference to the requirement imposed by the corresponding numbered paragraph of that Schedule;

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

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

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the undertaker” means Multifuel Energy Limited, a company incorporated under the Companies Acts (company number SC286672) and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth PH1 3AQ; or (except in article 8(2)) any other person to whom the benefit, or any part of the benefit, of this Order may from time to time have been transferred or granted under article 8 (transfer of the benefit of this Order), to the extent of the relevant transfer or grant;

“the unnamed road” means the unnamed road to the east of and adjacent to the A1(M) which leads northwards from Stranglands Lane to the western boundary of Work No. 1A;

“waste derived fuel” means fuel derived from (i) processed municipal solid waste, (ii) commercial and industrial waste or (iii) waste wood;

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

“the works plans” means the documents certified collectively as the works plans by the Secretary of State for the purposes of this Order under article 23.

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

(3) A reference in this Order to a “grid reference” is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

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

(5) All references in this Order to grid references and heights above ordnance datum are to be construed subject to the tolerances to which Ordnance Survey measures them.

(6) A reference in this Order to a “Work” identified by a number is a reference to the Work of that number described in Schedule 1 and shown on the works plans.

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(a) 1981 c. 67.

## **Electronic communications**

**3.—**(1) In this Order—

- (a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form;
- (b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (3); and “written” and other cognate expressions are to be construed accordingly.

(2) If an electronic communication is received outside the recipient’s business hours, it is to be taken to have been received on the next business day.

(3) The conditions are that the communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.

(5) In this article “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a).

## **PART 2**

### **PRINCIPAL POWERS**

#### **Development consent granted by this Order**

**4.** Subject to the provisions of this Order (including the requirements), the undertaker is granted development consent for the authorised development.

#### **Limits of deviation**

**5.—**(1) In carrying out the authorised development the undertaker may deviate laterally from the lines, situations or building outlines shown on the works plans and sheet 1 of the indicative layout—

- (a) in such a way as to reduce the size of the relevant part of the authorised development, to such extent as the undertaker considers necessary or expedient;
- (b) in such a way as to increase the size of the relevant part of the authorised development, to the maximum extent of the limits of deviation shown on the relevant document.

(2) Paragraph (1) is subject to the following exceptions—

- (a) the centre point of the emissions stack comprised in Work No. 1A must be at grid reference 447250 425345;
- (b) the north-west corner of the cooling system comprised in Work No. 1A must be at grid reference 447226 425285;
- (c) the width and length of each building comprised in the authorised development and listed in Schedule 3 (maximum building dimensions) must not exceed the maximum width or length for that building specified in that Schedule; and

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(a) 2000 c. 7.

- (d) the width and length of each building comprised in the authorised development and listed in Schedule 4 (minimum building dimensions) must not be less than the minimum width or length for that building specified in that Schedule.

(3) In carrying out the authorised development the undertaker may deviate vertically from the levels shown on sheet 2 of the indicative layout, in such a way as to reduce or increase the size of the relevant part of the authorised development, to such extent as the undertaker considers necessary or expedient.

(4) Paragraph (3) is subject to the following exceptions—

- (a) the height of the emissions stack comprised in Work No. 1A must be 136 metres above ordnance datum (Newlyn);
- (b) the height of each building comprised in the authorised development and listed in Schedule 3 (maximum building dimensions) must not exceed the maximum height for that building specified in that Schedule;
- (c) the height of each building comprised in the authorised development and listed in Schedule 4 (minimum building dimensions) must not be less than the minimum width or length for that building specified in that Schedule; and
- (d) each part of the authorised development, apart from piling works, must be at least 1 metre above the relevant groundwater table level.

(5) In this article—

the “indicative layout” means the document certified as the indicative generating station site layout, elevation and sections plan – concept layout by the Secretary of State for the purposes of this Order under article 23;

“the relevant groundwater table level” means, in relation to each part of the authorised development, the level of the groundwater table in the land on which it is proposed to construct that part, as established pursuant to requirement 6 (pre-development groundwater table level survey).

#### **Authorisation of the construction and operation of the electricity generating station**

**6.**—(1) In accordance with section 140 of the 2008 Act, the undertaker is authorised to construct and operate the electricity generating station comprised in Work No. 1.

(2) Paragraph (1) does not relieve the undertaker of any obligation other than under section 36 of the 1989 Act to obtain a permit, licence or other authorisation for the purposes of constructing or operating an electricity generating station.

#### **Power to maintain the authorised development**

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

(2) Paragraph (1) does not authorise any works—

- (a) not assessed in the environmental statement, or
- (b) which would result in the authorised development varying from the description in Schedule 1.

#### **Transfer of the benefit of this Order**

**8.**—(1) Where paragraph (3) applies, the undertaker may—

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

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

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

(3) This paragraph applies where—

- (a) the Secretary of State consents in writing to the proposed transfer or grant;
- (b) the proposed transfer or grant—
  - (i) is to a person who is a street authority, and
  - (ii) is a transfer or grant of only the benefit of article 9 (street works) and related statutory rights; or
- (c) the proposed transfer or grant—
  - (i) is to a person who holds a transmission licence or a distribution licence under section 6 of the 1989 Act, and
  - (ii) is a transfer or grant of the benefit of the Order only to the extent necessary for that person to operate the connection to the electricity grid network comprised in Work No. 2.

## PART 3

### SUPPLEMENTARY POWERS

#### **Street works**

**9.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of the streets specified in Schedule 5 (streets subject to street works) as is within the Order limits and may—

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

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

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

#### **Access to works**

**10.** The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in Schedule 6 (access to works); and
- (b) with the approval of the planning authority after consultation with the highway authority, form and lay out such other means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

**11.**—(1) The street authority and the undertaker may enter into an agreement with respect to the carrying out of any of the works referred to in article 9(1) (street works).

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

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

### **Discharge of water**

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

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

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

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

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

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

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

(7) This article does not authorise a water discharge activity prohibited by regulation 12 of the 2010 Regulations.

(8) In this article—

“public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local authority, a National Park authority, a sewerage undertaker or an urban development corporation;

“water discharge activity” has the same meaning as in the 2010 Regulations;

other expressions, excluding “watercourse”, used both in this article and in the Water Resources Act 1991(c) have the same meanings as in that Act.

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

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

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(a) 1991 c. 56.  
(b) 1964 c. 40.  
(c) 1991 c. 57.

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

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

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

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

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

- (a) in land located within the highway boundary, without the consent of the highway authority;
- (b) in a private street, without the consent of the street authority.

(5) A consent for the purpose of paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) The undertaker must compensate any owner or occupier of land who sustains loss or damage by reason of the exercise of the authority conferred by this article for that loss or damage.

(7) Any compensation payable under paragraph (6) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

### **Felling or lopping of trees**

**14.—**(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes that it is necessary to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1) the undertaker may not cause unnecessary damage to a tree or shrub.

(3) The undertaker must compensate any person who sustains loss or damage by reason of the exercise of the authority conferred by this article for that loss or damage.

(4) Any compensation payable under paragraph (3) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

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

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

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

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

(4) Subject to paragraph (6), the undertaker must compensate any owner or occupier of land appropriated under paragraph (1) who sustains loss by reason of that appropriation for that loss.

(5) Any compensation payable under paragraph (4) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

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

### **Statutory undertakers**

**16.—**(1) The undertaker may extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers shown on the land plan and described in the book of reference.

(2) In paragraph (1), “the land plan” and “the book of reference” mean the documents respectively certified as such by the Secretary of State for the purposes of this Order under article 23.

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

**17.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 16 (statutory undertakers), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer, but where such a sewer is removed under article 16 (statutory undertakers), any person who is—

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

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

(3) This article has no effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

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

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

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(a) 2003 c. 21.



**PART 4**  
**MISCELLANEOUS AND GENERAL**

**Defence to proceedings in respect of statutory nuisance constituted by noise emitted from premises**

**18.**—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(a)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act.

(2) No order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to that construction or maintenance—
  - (i) in accordance with a notice served under section 60 of the Control of Pollution Act 1974<sup>(b)</sup> (control of noise on construction site),
  - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site) or section 65 of that Act (noise exceeding registered level), or
  - (iii) in compliance with requirement 20 (construction hours), requirement 23(3) (British Standards) or the programme approved under requirement 23(1) (programme for the monitoring and control of construction noise);
- (b) relates to premises used by the undertaker for the purposes of or in connection with the operation of the authorised development and is attributable to that operation in compliance with the programme approved under requirement 24(1) (programme for the monitoring and control of operational noise); or
- (c) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

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

**Procedures for approvals etc. required by the requirements**

**19.** Schedule 7 (procedures for approvals etc. required by the requirements) has effect in relation to each approval, consent and agreement required by the requirements.

**Removal of human remains**

**20.**—(1) Before the undertaker carries out any development or works which it has reason to think will or may disturb any human remains in the Order land it must remove those remains, or cause them to be removed, from the Order land in accordance with the following provisions of this article.

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

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(a) 1990 c. 43.  
(b) 1974 c. 40.

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

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to Wakefield Metropolitan District Council.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of a deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of his or her intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4) and the remains in question can be identified, that person may cause the remains to be—

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

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

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

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land, or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days, or
- (c) within 56 days after an order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains, or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that a person giving notice under paragraph (4) is the personal representative or relative of a deceased person whose remains are interred in the Order land and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article the undertaker must send—

- (a) a certificate of re-interment or cremation to the Registrar General, giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) to Wakefield Metropolitan District Council.

(11) The removal of the remains of a deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857<sup>(a)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

#### **Application of landlord and tenant law 21.—**

(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the authorised development;
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as the agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

(3) No enactment or rule of law regulating the rights and obligations of landlords and tenants applies in relation to the rights and obligations of the parties to any lease granted by or under an agreement to which this article applies so as to—

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

#### **Operational land for the purposes of the Town and Country Planning Act 1990**

**22.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990<sup>(b)</sup> (cases in which land is to be treated as operational land for the purposes of that Act).

#### **Certification of documents**

**23.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State a copy of each of the documents submitted with the application for this Order and listed in paragraph (2), for certification that it is a true copy of the document.

(2) The documents are—

- (a) the biodiversity strategy;
- (b) the book of reference;
- (c) the combined heat and power assessment;
- (d) the design and access statement;
- (e) the environmental statement, including the figures and appendices;

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(a) 1857 c. 81.

(b) 1990 c. 8.

- (f) the grid connection statement;
- (g) the indicative generating station site layout, elevations and sections – concept layout;
- (h) the indicative landscaping plan;
- (i) the land plan;
- (j) the landscaping strategy;
- (k) the lighting strategy;
- (l) the Order plan;
- (m) the statement of engagement of section 79(1) of the Environmental Protection Act 1990;
- (n) the statement of reasons;
- (o) the works plans.

(3) A document certified in accordance with paragraph (1) is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

**Arbitration**

**24.** Any dispute under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator agreed between the parties or, failing agreement, appointed on the application of either party (after giving notice in writing to the other) by the President of the Law Society of England and Wales.

Signed by authority of the Secretary of State

Address  
Date

*Name*  
Parliamentary Under Secretary of State  
Department

# SCHEDULES

## SCHEDULE 1

Article 2

### THE AUTHORISED DEVELOPMENT

#### **Nationally significant infrastructure project**

The construction and operation of a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising:

**Work No. 1 – an onshore electricity generating station** located on land at the Ferrybridge Power Station site, north-west of Knottingley, West Yorkshire, with a nominal gross electrical capacity of up to 90MWe, fuelled primarily by waste derived fuels and comprised of the following works:

*Work No. 1A* – the generating station and its main process area, including:

- (a) fuel reception and storage facilities, consisting of a tipping hall and vehicle ramps, shredder, fuel storage bunker and crane;
- (b) a combustion system housed within a boiler hall comprising two combustion lines and associated boilers;
- (c) a steam turbine and generator housed within a turbine hall;
- (d) a bottom ash handling system, including storage bunker and ash collection bay;
- (e) a flue gas treatment system, including residue and reagent storage silos and tanks;
- (f) an emissions stack and associated emissions monitoring systems;
- (g) a cooling system comprising an air cooled condenser;
- (h) a compressed air system;
- (i) diesel storage tanks;
- (j) a process effluent storage tank;
- (k) a demineralised water treatment plant;
- (l) fire water tank and fire protection facilities;
- (m) up to two auxiliary diesel generators each of up to 4MWe output;
- (n) pipe racks and pipe runs;
- (o) an electrical switchyard, including circuit breaker and transformer;
- (p) a control and administrative building;
- (q) a workshop building; and
- (r) hardstandings, internal vehicular access roads, vehicle turning, waiting and parking areas and pedestrian and cycle facilities and routes.

*Work No. 1B* – in connection with and in addition to Work No. 1A, supporting buildings, works and areas, including:

- (a) a vehicular access road, level crossing and pedestrian and cycle facilities and routes;
- (b) security gatehouses and barriers;
- (c) up to four weighbridges;
- (d) a heavy goods vehicle holding area;
- (e) an external fuel container storage area;
- (f) vehicle parking;

- (g) an outage contractor compound; and
- (h) a surface water attenuation pond and surface water drainage connection and pipework to Fryston Beck.

*Work No. 1C* – in connection with and in addition to Work No. 1A, further supporting works, including a towns mains water connection and pipework to Stranglands Lane.

Shown on works plan sheet 2.

### **Associated development**

Associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising:

**Work No. 2 – a connection to the electricity grid network**, including, where required, modification works to existing grid connection infrastructure consisting of one only of the following options:

*Work No. 2A* – an underground electrical connection running south-west from Work No. 1A and to the north and west of the FM1 Power Station and connecting with the substation associated with the FM1 Power Station to the south-west of the FM1 Power Station.

*Work No. 2B* – an underground electrical connection running north-east from Work No. 1A and connecting to the National Grid substation on the former Ferrybridge ‘B’ Power Station site.

*Work No. 2C* – an underground electrical connection running north-east from Work No. 1A and connecting to a new substation (including circuit breaker, transformer and switch yard), to be constructed to the east of Work No. 1A and connected to the existing 132kV underground cables to the east.

Shown on works plan sheet 3.

**Work No. 3 – improvements to an existing access road known as the unnamed road**, running from the south-west of Work No. 1A, south and to the west of the FM1 Power Station, to provide pedestrian access and an alternative vehicular access for cars and light goods vehicles, including widening, resurfacing, drainage, lighting, fencing and a security gatehouse;

Shown on works plan sheet 4.

**Work No. 4 – a foul water connection**, consisting of one only of the following options:

*Work No. 4A* – an underground pipe running from the south-west corner of Work No. 1A and to the west of the FM1 Power Station connecting to an existing private foul water system to the south of the FM1 Power Station.

*Work No. 4B* – an underground pipe running from the south-east corner of Work No. 1A and south-east and south along Kirkhaw Lane connecting to an existing public foul water system.

Shown on works plan sheet 5.

In connection with and in addition to Works Nos. 1, 2, 3 and 4 and to the extent that it does not otherwise form part of those Works, further associated development including:

- (a) external lighting;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) signage;
- (d) CCTV and other security measures;
- (e) surface and foul water drainage facilities;
- (f) potable water supply;
- (g) new telecommunications and utilities apparatus and connections;

- (h) hard and soft landscaping;
- (i) biodiversity enhancement measures;
- (j) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (k) works for the protection of buildings and land affected by the authorised development;
- (l) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;
- (m) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

## SCHEDULE 2

Article 2

### THE REQUIREMENTS

#### **Commencement of the authorised development**

1.—(1) The authorised development must commence within five years of the date on which this Order comes into force.

(2) The authorised development may not commence unless the undertaker has given the planning authority 14 days' notice of its intention to commence the authorised development.

#### **Commercial use**

2. The authorised development may not be brought into commercial use unless the undertaker has given the planning authority 28 days' notice of its intention to commence commercial use of the authorised development.

#### **Fuel type**

3.—(1) Only fuel of a type specified in the environmental permit may be combusted in the boilers of the authorised development.

(2) Except for purposes of the start-up or support firing of a boiler, only waste derived fuel may be combusted in the boilers of the authorised development.

#### **Detailed design**

4.—(1) Work No. 1 may not commence until details of the following have been submitted to and approved by the planning authority—

- (a) the siting, layout, scale and external appearance (including the colours, materials and surface finishes) of all new temporary and permanent buildings;
- (b) the internal roads, ramps, turning facilities, parking, loading and unloading facilities, weighbridges, hardstandings and pedestrian and cycle facilities and routes;
- (c) drainage, storage tanks and external lighting;
- (d) finished ground and floor levels.

(2) Work No. 2 may not commence until notice of which one of Work No. 2A, Work No. 2B or Work No. 2C has been selected as the connection to the electricity grid network, including details of the design of the option selected, has been submitted to and approved by the planning authority.

(3) Work No. 3 may not commence until details of the following have been submitted to and approved by the planning authority—

- (a) surfacing
- (b) drainage;
- (c) fencing;
- (d) external lighting;
- (e) pedestrian and cycle facilities and routes.

(4) Work No. 4 may not commence until notice of which one of Work No. 4A or Work No. 4B has been selected as the connection to the foul water system, including details of the design of the option selected, has been submitted to and approved by the planning authority.

(5) All details submitted and approved under subparagraph (1), (2), (3) or (4) must be in accordance with the design and scale parameters set out in chapter 3 of the environmental statement.



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

### **Design of fuel storage bunker**

5.—(1) Work No. 1 may not commence until details of the design of the fuel storage bunker comprised in Work No. 1A have been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) The design of the fuel storage bunker must be informed by the results of the groundwater table level survey approved under requirement 6(1).

(3) The fuel storage bunker must be constructed in accordance with the approved details.

### **Pre-development groundwater table level survey**

6.—(1) Work No. 1 may not commence until the undertaker has carried out the groundwater table level survey and the results of that survey have been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) In subparagraph (1), “the groundwater table level survey” means a survey which—

- (a) is carried out within the three existing boreholes on the Order land shown in the Geotechnical Site Investigation Report in Appendix 13A to the environmental statement or within such other boreholes on the Order land as the planning authority, after consultation with the Environment Agency, may approve,
- (b) is carried out over a period of 12 months, and
- (c) establishes the groundwater table level at each of those locations.

### **Provision of landscaping**

7.—(1) No part of the authorised development may be commissioned until a detailed landscaping scheme for that part has been submitted to and approved by the planning authority.

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

- (a) the treatment of hard surfaced areas;
- (b) earthworks, including the proposed levels and contours of landscaped areas;
- (c) the seed mix for areas of grassland;
- (d) tree and shrub planting, including the height, size and species and the density of distribution;
- (e) the management of existing and new areas of grassland and tree and shrub planting;
- (f) an implementation timetable for the phasing and completion of the landscaping works.

(3) Each scheme submitted and approved must be in accordance with the indicative landscaping plan, the biodiversity strategy and the biodiversity enhancement and management plan.

(4) In subparagraph (3), “the biodiversity enhancement and management plan” means the plan approved under requirement 17(1).

### **Implementation and maintenance of landscaping**

8.—(1) All landscaping works must be carried out in accordance with the relevant landscaping scheme (including the implementation timetable) approved under requirement 7.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

(3) Any area of grassland planted as part of an approved landscaping scheme that, within a period of five years after planting, dies or becomes, in the opinion of the planning authority,

seriously damaged or diseased, must be reseeded in the first available planting season with the same seed mix as that originally planted.

(4) The undertaker must implement and maintain an annual landscaping maintenance plan during the construction, operation and decommissioning of the authorised development.

### **External lighting**

**9.**—(1) No part of the authorised development may commence until a scheme for all temporary and permanent external lighting to be installed during the construction and operation of that part (except the aviation warning lighting required by virtue of requirement 44) has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) Each scheme submitted and approved must—

- (a) include measures to minimise and otherwise mitigate any artificial light emissions during construction and operation of the authorised development;
- (b) be in accordance with the lighting strategy.

(3) In subparagraph (2)(b), “the lighting strategy” means the document certified as the lighting strategy by the Secretary of State for the purposes of this Order under article 23.

(4) Each scheme must be implemented as approved.

### **Highway accesses**

**10.**—(1) No part of the authorised development may commence until details of the siting, design and layout (including visibility splays and surfacing) of any new or modified permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, for that part have been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The authorised development may not be brought into commercial use until all highway accesses have been constructed.

(3) The highway accesses must be constructed in accordance with the relevant approved details.

### **Fencing – A1(M)**

**11.**—(1) The authorised development may not commence until details of the design and construction of any fencing on the boundary of the authorised development with the A1(M) have been submitted to and, after consultation with the Highways Agency, approved by the planning authority.

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

(3) The authorised development may not be brought into commercial use until the fencing has been completed.

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

**12.**—(1) No part of the authorised development may commence until details of all proposed means of enclosure for that part have been submitted to and approved by the planning authority.

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

(3) Any approved temporary means of enclosure must be removed within 12 months after the authorised development is brought into commercial use.

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

(5) Each part of the authorised development must be carried out in accordance with the relevant approved details.

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

**13.—**(1) No part of the authorised development may commence until details of the surface and foul water drainage systems (including means of pollution control, in accordance with the CEMP) for that part have been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) The details submitted and approved must be in accordance with the principles and strategy set out in Appendix 12A to the environmental statement.

(3) The surface and foul water drainage systems must be constructed in accordance with the relevant approved details.

(4) The authorised development may not be commissioned until the surface and foul water drainage systems have been constructed.

### **Flood risk mitigation**

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

(2) Each scheme submitted and approved must be in accordance with the principles and strategy set out in Appendix 12A to the environmental statement.

(3) Each approved scheme must be maintained throughout the construction and operation of the relevant part of the authorised development.

### **Contaminated land and groundwater**

**15.—**(1) No part of the authorised development may commence until a scheme to deal with the contamination of land (including groundwater) within the Order limits, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, for that part has been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(2) Each scheme submitted and approved under subparagraph (1)—

(a) must be in accordance with the principles set out in chapter 13 of, and the Geotechnical Site Investigation Report in Appendix 13A to, the environmental statement;

(b) may be included in the CEMP.

(3) Each scheme submitted and approved under subparagraph (1) must include an investigation and assessment report, prepared by a specialist consultant approved by the planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(4) Subparagraph (5) applies if, during the construction of any part of the authorised development, any contamination of land (including groundwater) which was not identified in the approved scheme for that part is found within the Order limits.

(5) Unless the planning authority agrees otherwise, no further construction of the relevant part of the authorised development may be carried out until a remediation scheme to deal with the contamination has been submitted to and, after consultation with the Environment Agency, approved by the planning authority.

(6) The authorised development, including any remediation, must be carried out in accordance with all approved schemes.

### **Archaeology**

**16.—**(1) No part of the authorised development may commence until a programme of archaeological work for that part has been submitted to and, after consultation with West Yorkshire Archaeology Advisory Service, approved by the planning authority.

- (2) Each programme submitted and approved must include—
- (a) a written scheme of investigation;
  - (b) an assessment of significance and research questions;
  - (c) a programme and methodology for site investigation and recording;
  - (d) a programme for post-investigation assessment;
  - (e) arrangements to be made for—
    - (i) the analysis of site investigation and recording,
    - (ii) the publication and dissemination of the analysis and of the records of the site investigation, and
    - (iii) the archive deposition of the analysis and records;
  - (f) the nomination of a competent person or organisation to carry out works set out in the written scheme of investigation.
- (3) Any field work must be carried out in accordance with the written scheme of investigation included in the approved programme.
- (4) The authorised development may not be brought into commercial use until—
- (a) the site investigation and post-investigation assessment provided for in the approved programme have been completed, and
  - (b) the arrangements referred to in subparagraph (2)(e) made under the approved programme have been implemented.

#### **Biodiversity enhancement and management plan**

**17.—**(1) The authorised development may not be commissioned until a biodiversity enhancement and management plan has been submitted to and, after consultation with Yorkshire Wildlife Trust, approved by the planning authority.

- (2) The plan submitted and approved must—
- (a) be in accordance with the survey results and mitigation and enhancement measures included in chapter 12 of the environmental statement, the biodiversity strategy and the indicative landscaping strategy;
  - (b) include an implementation timetable and details relating to maintenance and management.
- (3) The plan must be implemented as approved.

#### **Construction environmental management plan**

**18.—**(1) The authorised development may not commence until a construction environmental management plan has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

- (2) The plan submitted and approved must—
- (a) be in accordance with the principles set out in chapters 7 to 16 of the environmental statement and the framework construction environmental management plan contained in Appendix 3A to the environmental statement;
  - (b) include measures for the protection of any protected species found to be present on the Order land during construction;
  - (c) include the mitigation measures included in chapter 9 of the environmental statement;
  - (d) incorporate a code of construction practice; and
  - (e) incorporate a scheme for handling complaints received from local residents, business and organisations relating to emissions of noise, odour or dust from the authorised development during its construction, which must include appropriate corrective action in relation to substantiated complaints relating to emissions of noise.

(3) In subparagraph (2)(b), a “protected species” means a species protected under the Wildlife and Countryside Act 1981(a) or the Conservation of Habitats and Species Regulations 2010(b).

(4) All construction works associated with the authorised development must be carried out in accordance with the CEMP.

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

**19.**—(1) The authorised development may not commence until a construction traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 7 of the environmental statement and the construction travel plan framework contained in Appendix 7C to the environmental statement.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) the construction programme;
- (d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers’ plant and equipment and any temporary removal of street furniture;
- (e) measures to promote the use of sustainable transport modes by construction personnel in order to minimise the overall traffic impact and promote sustainable transport modes;
- (f) details of parking for construction personnel within the construction site; and
- (g) details of a co-ordinator to be appointed to manage and monitor the implementation of the plan, including date of appointment, responsibilities and hours of work.

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

(5) The plan must be implemented as approved.

### **Construction hours**

**20.**—(1) Construction work associated with the authorised development may only take place—

- (a) between 0700 and 1900 hours on weekdays (excluding bank holidays);
- (b) between 0700 and 1300 hours on Saturdays (excluding bank holidays).

(2) The restrictions in subparagraph (1) do not apply to work as a result of which the level of noise emitted from the construction site does not exceed the noise limits specified in subparagraph (3) as measured by continuous noise monitoring and which—

- (a) does not involve the use of impact wrenches, sheet piling, concrete scabbling, external earthworks or concrete jack hammering,
- (b) is associated with an emergency, or
- (c) is carried out with the prior approval of the planning authority.

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(a) 1981 c. 69.  
(b) S.I. 2010/490.

- (3) The limits are, under reference to British Standard 5228-1:2009+A1:2014—
- (a) 55 dB  $L_{Aeq, 1h}$  at the receptors identified in chapter 9 of the environmental statement as category C receptors;
  - (b) 50 dB  $L_{Aeq, 1h}$  at the receptors identified in chapter 9 of the environmental statement as category B receptors.
- (4) Nothing in subparagraph (1) prevents—
- (a) start-up activities from 0630 to 0700 hours on weekdays and Saturdays (excluding bank holidays),
  - (b) shut-down activities from 1900 to 1930 hours on weekdays (excluding bank holidays), or
  - (c) shut-down activities from 1300 to 1330 hours on Saturdays (excluding bank holidays).
- (5) In subparagraph (4), “start-up activities” and “shut-down activities” mean activities carried out by construction staff in preparation for or when finishing work, as applicable, including—
- (a) changing into or out of protective clothing,
  - (b) receiving safety or other briefings, and
  - (c) any other such activities that do not generate levels of noise above ambient levels at the receptors identified in chapter 9 of the environmental statement.
- (6) During the construction of the authorised development, heavy goods vehicles may only enter or leave the construction site—
- (a) between 0730 and 1900 hours on weekdays (excluding bank holidays);
  - (b) between 0730 and 1300 hours on Saturdays (excluding bank holidays).
- (7) The restrictions in subparagraph (6) do not apply to vehicle movements which are carried out with the prior approval of the planning authority.

### **Piling and penetrative foundation design**

**21.**—(1) No part of the authorised development may commence until a piling and penetrative foundation design method statement, informed by a risk assessment, for that part has been submitted to and, after consultation with the Environment Agency and Selby District Council, approved by the planning authority.

(2) No piling or penetrative foundation works may be carried out unless the relevant approved method statement concludes that the works will not result in an unacceptable risk to the groundwater within the Order limits.

(3) All piling and penetrative foundation works must be carried out in accordance with the relevant approved method statement.

### **Construction – A1(M)**

**22.**—(1) The authorised development may not commence until a scheme detailing the construction methods to be employed in the vicinity of the A1(M) has been submitted to and, after consultation with the Highways Agency, approved by the planning authority.

(2) The scheme submitted and approved must include details of—

- (a) the location and dimensions of any cranes within the vicinity of the boundary fence of the A1(M), including a crane risk assessment;
- (b) the location of any other major items of construction plant;
- (c) the location and extent of any construction areas or compounds or construction buildings within the vicinity of the boundary fence of the A1(M); and
- (d) external lighting, including measures to minimise light spillage to the A1(M).

(3) The scheme must be implemented as approved.

### **Control of noise during construction**

**23.**—(1) The authorised development may not commence until a programme for the monitoring and control of noise during the construction of the authorised development has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The programme submitted and approved must specify—

- (a) each location from which noise is to be monitored;
- (b) the method of noise measurement;
- (c) the maximum permitted levels of noise at each monitoring location during the daytime;
- (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
- (e) the noise control measures to be employed.

(3) All activities on the Order land associated with the construction of the authorised development must be carried out in accordance with British Standards 5228-1:2009 and 5228-2:2009.

### **Control of operational noise**

**24.**—(1) The authorised development may not be commissioned until a programme for the monitoring and control of noise during the operation of the authorised development has been submitted to and, after consultation with the Environment Agency and Selby District Council, approved by the planning authority.

(2) The programme submitted and approved must specify—

- (a) each location from which noise is to be measured;
- (b) the method of noise measurement, which must be in accordance with British Standard 4142:2014;
- (c) the maximum permitted levels of noise at each monitoring location; and
- (d) provision requiring the undertaker to take noise measurements as soon as possible following a request by the planning authority and to submit the measurements to the planning authority as soon as they are available.

(3) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the programme, except—

- (a) in the case of an emergency,
- (b) with the prior approval of the planning authority, or
- (c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with subparagraph (4).

(4) Except in the case of an emergency, the undertaker must give the planning authority 24 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(5) So far as is reasonably practicable, steam purging and the operation of emergency pressure relief valves or similar equipment may only take place—

- (a) between 0900 and 1700 hours on weekdays (excluding bank holidays);
- (b) between 0900 and 1300 hours on Saturdays (excluding bank holidays).

(6) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the programme because of an emergency—

- (a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the planning authority a statement detailing—
  - (i) the nature of the emergency, and

- (ii) why it is necessary for the level of noise to have exceeded the maximum permitted level; and
- (b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—
  - (i) the reasons for the emergency, and
  - (ii) how long it expects the emergency to last.

#### **Control of odour emissions**

**25.**—(1) The authorised development may not be commissioned until a scheme for the management and mitigation of odour emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in the odour management plan contained in Appendix 8B to the environmental statement.

(3) The authorised development may not be brought into commercial use until the approved scheme has been implemented.

(4) The approved scheme must be maintained throughout the operation of the authorised development.

#### **Control of dust emissions**

**26.**—(1) The authorised development may not commence until a scheme for the management and mitigation of dust emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

#### **Control of smoke emissions**

**27.**—(1) The authorised development may not commence until a scheme for the management and mitigation of smoke emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the authorised development.

#### **Control of steam emissions**

**28.**—(1) The authorised development may not commence until a scheme for the management and mitigation of steam emissions has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The approved scheme must be maintained during the construction, operation and decommissioning of the authorised development.

#### **Control of insects and vermin**

**29.**—(1) The authorised development may not be commissioned until—

- (a) a scheme to prevent the infestation or emanation of insects or vermin from the authorised development has been submitted to and approved by the planning authority; and
- (b) the approved scheme has been implemented.

(2) The approved scheme must be maintained throughout the operation of the authorised development.



(3) In subparagraph (1), “insects and vermin” excludes insects and vermin that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981<sup>(a)</sup> (animals which are protected), unless they are included in respect of section 9(5) of that Act only.

### **Accumulations and deposits**

**30.**—(1) The authorised development may not commence until a scheme for the management of relevant accumulations and deposits has been submitted to and approved by the planning authority.

(2) In subparagraph (1), “relevant accumulations and deposits” means accumulations and deposits—

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

(3) The approved scheme must be implemented before and maintained during the construction, operation and decommissioning of the authorised development

### **Restoration of land used temporarily for construction**

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

(2) The land must be restored within 12 months after the authorised development is brought into commercial use, in accordance with—

- (a) the restoration scheme approved in accordance with subparagraph (1),
- (b) each landscaping scheme approved in accordance with requirement 7, and
- (c) the biodiversity enhancement and management plan approved in accordance with requirement 17.

### **Operational traffic routing and management plan**

**32.**—(1) The authorised development may not be commissioned until an operational traffic routing and management plan has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 7 of the environmental statement and the operational travel plan framework contained in Appendix 7C to the environmental statement.

(3) The plan submitted and approved must include details of the routes to be used for the transport of fuel, consumables and combustion by-products to and from the authorised development.

(4) The plan must be implemented as approved.

### **Travel plan – operational staff**

**33.**—(1) The authorised development may not be brought into commercial use until a travel plan for operational staff has been submitted to and, after consultation with the relevant highway authorities, approved by the planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in chapter 7 of the environmental statement and the operational travel plan framework contained in Appendix 7C to the environmental statement.

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(a) 1981 c. 69.

- (3) The plan submitted and approved must include—
- (a) details of the travel plan budget;
  - (b) measures to promote the use of sustainable transport modes to and from the authorised development by operational staff;
  - (c) provision as to the responsibility for, and timescales of, the implementation of those measures;
  - (d) a monitoring and review regime.
- (4) The approved plan must be implemented within six months after the authorised development is brought into commercial use and must be maintained throughout the operation of the authorised development.

### **Operational deliveries**

- 34.**—(1) A heavy goods vehicle transporting fuel, consumables or combustion by-products may only enter or leave the authorised development—
- (a) between 0700 and 2200 hours on weekdays (excluding bank holidays);
  - (b) between 0700 and 1830 hours on Saturdays (excluding bank holidays).
- (2) The restrictions in subparagraph (1) do not apply to a movement of a heavy goods vehicle which is—
- (a) associated with an emergency, or
  - (b) carried out with the prior approval of the planning authority.

### **Sustainable fuel transport management plan**

- 35.**—(1) The authorised development may not be brought into commercial use until a sustainable fuel transport management plan has been submitted to and, after consultation with the relevant highway authorities and Canal & River Trust, approved by the planning authority.
- (2) The plan submitted and approved must set out measures to be taken by the undertaker during the operation of the authorised development to promote the sustainable transport of fuel and combustion by-products by means other than road, including by rail and barge.
- (3) The plan submitted and approved must include—
- (a) details of measures to promote sustainable modes of transport;
  - (b) details of arrangements for monitoring and recording transport movements by mode of transport;
  - (c) details of a review regime;
  - (d) a requirement to undertake an assessment of the costs of upgrading the existing wharf facility at the Ferrybridge Power Station site, including a description of the refurbishment work required and a breakdown of the costs of that work.
- (4) The approved plan must be maintained and operated during the operation of the authorised development.
- (5) Every five years during the operation of the authorised development, the undertaker must carry out an appraisal of the viability of upgrading the existing wharf facility in the context of the evaluation of the potential for fuel and ash transportation by water.

### **Enclosure of loads**

- 36.** During the operation of the authorised development, each heavy goods vehicle transporting bulk materials, fuel or combustion by-products to or from the authorised development must be enclosed.

### **Air quality – emissions reduction**

**37.**—(1) During the operation of the authorised development—

- (a) the average emission limit value for nitrogen monoxide and nitrogen dioxide, expressed as nitrogen dioxide, of the combustion emissions discharged through the emissions stack comprised in Work No. 1A for each day must not exceed 180 mg/Nm<sup>3</sup>, standardised to the requirements specified in Annex VI of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010**(a)**;
- (b) each heavy goods vehicle delivering fuel to the authorised development must be designed to comply with the emission limit values in Annex 1 to Regulation (EC) 595/2009 of the European Parliament and of the Council of 18th June 2009**(b)**.

(2) In subparagraph (1)(a), “day” means a period of twenty-four hours beginning at midnight.

### **Air quality monitoring**

**38.**—(1) The authorised development may not be commissioned until a scheme of air quality monitoring has been submitted to and, after consultation with Selby District Council, approved by the planning authority.

(2) The scheme submitted and approved must provide for the monitoring of—

- (a) nitrogen oxides;
- (b) any other pollutant agreed by the planning authority.

(3) The scheme submitted and approved must specify—

- (a) each location at which air pollution is to be measured;
- (b) the equipment and method of measurement to be used;
- (c) the frequency of measurement.

(4) The first measurement made in accordance with the scheme must be made not less than 12 months before the authorised development is brought into commercial use.

(5) Unless the planning authority gives the undertaker notice under subparagraph (6), the final measurement made in accordance with the scheme must be made at least 24 months after the authorised development is commissioned.

(6) The planning authority may, if it thinks appropriate, give notice to the undertaker that the scheme is to be extended for the period specified in the notice, which may not be more than 24 months from the date of the final measurement in accordance with the scheme as originally approved.

(7) The scheme must be implemented as approved.

(8) For each year from the date on which the authorised development is commissioned, the undertaker must, within three months after the final measurement made in that year, provide the planning authority with a report of measurements made in accordance with the scheme in that year.

### **Fire prevention**

**39.**—(1) The authorised development may not commence until a fire prevention method statement has been submitted to and, after consultation with West Yorkshire Fire and Rescue Service, approved by the planning authority.

(2) The method statement submitted and approved must include—

- (a) a fire risk assessment;
- (b) details of fire detection and suppression measures;

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(a) OJ No L 334, 17.12.10, p17.

(b) OJ No L 188, 18.7.09, p1.

- (c) the location of and accesses to all fire appliances in each major building and each storage area in the authorised development.

### **Combined heat and power**

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

(2) The undertaker must maintain such space and routes for the lifetime of the authorised development.

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

(4) The CHP review submitted and approved must—

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

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

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

(7) Subparagraphs (4) and (5) apply in relation to a revised CHP review submitted under subparagraph (6) in the same way as they apply in relation to the CHP review submitted under subparagraph (3).

(8) In subparagraph (1), “the combined heat and power assessment” means the document certified as the combined heat and power assessment by the Secretary of State for the purposes of this Order under article 23.

### **Waste hierarchy scheme**

**41.**—(1) The undertaker must operate the authorised development in accordance with the waste hierarchy by means of the measures specified in the environmental permit and any operational environmental management system.

(2) In subparagraph (1)—

“the waste hierarchy” means the waste hierarchy set out in Article 4 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008(a);

“operational environmental management system” means a system of policies and procedures adopted by the undertaker to manage the environmental impact of the authorised development.

### **Waste management – construction and operational waste**

**42.**—(1) The authorised development may not commence until a construction site waste management plan has been submitted to and approved by the planning authority.

(2) The construction site waste management plan submitted and approved must be in accordance with the principles set out in chapter 16 of the environmental statement and the framework site waste management plan contained in Appendix 16A to the environmental statement.

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(a) OJ No L 312, 22.11.08, p3.

- (3) The construction site waste management plan must be implemented as approved.
- (4) The authorised development may not be brought into commercial use until an operational waste management plan has been submitted to and approved by the planning authority.
- (5) The operational waste management plan submitted and approved must be in accordance with the principles set out in chapter 16 of the environmental statement.
- (6) The operational waste management plan must be implemented as approved.

### **Decommissioning**

**43.**—(1) Within six months after it decides to decommission the authorised development, the undertaker must submit to the planning authority for its approval a decommissioning scheme.

(2) No decommissioning works may be carried out until the planning authority has approved the scheme.

(3) The scheme submitted and approved must be in accordance with the principles set out in chapter 3 of the environmental statement.

(4) The scheme submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the Order land to a condition agreed with the planning authority;
- (e) the phasing of any restoration works;
- (f) a timetable for the implementation of the scheme.

(5) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

(6) In subparagraph (5), “the undertaker” does not include a person to whom part of the benefit of this Order has been transferred or granted under article 8(3)(b) or (c) (transfer of part of the benefit of the Order to a street authority or to the operator of the connection to the electricity grid network).

### **Aviation warning lighting**

**44.**—(1) The authorised development may not commence until details of the aviation warning lighting to be installed on the emissions stack comprised in Work No. 1A and each crane required for the construction of the authorised development which has a height of 60m or greater have been submitted to and approved by the planning authority.

(2) The aviation warning lighting must be installed and operated in accordance with the approved details.

### **Air safety**

**45.** The authorised development may not commence until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for civil aviation purposes have been submitted to and approved by the planning authority.

### **Site security**

**46.**—(1) The authorised development may not be commissioned until a scheme detailing security measures to minimise the risk of crime within the Order limits has been submitted to and, after consultation with West Yorkshire Police, approved by the planning authority.

(2) The approved scheme must be maintained and operated throughout the operation and decommissioning of the authorised development.

### **Local liaison committee**

47.—(1) The authorised development may not commence until the undertaker has established a committee to liaise with local residents, businesses and organisations in relation to the construction and operation of the authorised development.

(2) The committee must include representatives of the undertaker.

(3) The undertaker must invite the planning authority and Selby District Council to nominate representatives to be members of the committee.

(4) The undertaker may invite such other businesses and organisations as it thinks appropriate to nominate representatives to be members of the committee.

(5) If there already exists a local liaison committee in relation to development on the Order land, that committee may, with the agreement of the planning authority and Selby District Council perform the functions of the committee to be established under subparagraph (1); and in that case the duty to establish a committee under subparagraph (1) does not apply.

### **Employment, skills and training plan**

48.—(1) Work No. 1 may not commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents has been submitted to and approved by the planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of Work No.1.

### **Interpretation**

49.—(1) In this Schedule—

“a bank holiday” is a day that is a bank holiday in England and Wales by virtue of section 1 of the 1971 Act;

“the biodiversity strategy” means the document certified as the biodiversity strategy by the Secretary of State for the purposes of this Order under article 23;

“the CEMP” means the construction environmental management plan approved in accordance with requirement 18(1);

“the commencement of the authorised development” means the first carrying out of any works, other than permitted preliminary works, for the construction of the authorised development; and “commence” and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

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

“the commissioning of the authorised development” means the process of testing all systems and components of the authorised development (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and “commission” and other cognate expressions, in relation to the authorised development, are to be construed accordingly;

“the construction site” means the Order land during the construction of the authorised development;

“the environmental permit” means a permit granted under the 2010 Regulations authorising the operation of the authorised development;

“the indicative landscaping plan” means the document certified as the indicative landscaping plan by the Secretary of State for the purposes of this Order under article 23;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“permitted preliminary works” means site clearance work, survey work, archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the diversion and laying of services, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements, the provision of site security and any other works agreed by the planning authority; and

“the relevant highway authorities” means Wakefield Metropolitan District Council, North Yorkshire Council and the Highways Agency, each in its capacity as a highway authority.

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the planning authority.

## SCHEDULE 3

Article 5

### MAXIMUM BUILDING DIMENSIONS

<i>Building</i>	<i>Maximum length (metres)</i>	<i>Maximum width (metres)</i>	<i>Maximum height (metres above ordnance datum (Newlyn))</i>
Tipping hall (Work No. 1A)	45	102	53
Fuel storage bunker (Work No. 1A)	42	102	64
Entry ramp to fuel storage bunker (Work No. 1A)	120	70	27
Exit ramp from fuel storage bunker (Work No. 1A)	120	70	27
Boiler hall (Work No. 1A)	63	60	74
Turbine hall (Work No. 1A)	40	40	44
Ash storage bunker and collection bay (Work No. 1A)	43	48	39
Flue gas treatment system (Work No. 1A)	55	82	56
Air cooled condenser (Work No. 1A)	98	40	41
Electrical switchyard, including circuit breaker and transformer (Work No. 1A)	40	15	31
Workshop building (Work No. 1A)	30	40	39
Control and administrative building (Work No. 1A)	15	55	64
Security gatehouses and weighbridges (Work No. 1B)	20	4	20
Substation (Work No. 2C)	90	55	36



## SCHEDULE 4

Article 5

### MINIMUM BUILDING DIMENSIONS

<i>Building</i>	<i>Minimum length (metres)</i>	<i>Minimum width (metres)</i>	<i>Minimum height (metres above ordnance datum (Newlyn))</i>
Tipping hall (Work No. 1A)	31	58	31
Fuel storage bunker (Work No. 1A)	31	58	49
Entry ramp to fuel storage bunker (Work No. 1A)	55	25	24
Exit ramp from fuel storage bunker (Work No. 1A)	55	25	24
Boiler hall (Work No. 1A)	27	45	57
Turbine hall (Work No. 1A)	27	27	34
Ash storage bunker and collection bay (Work No. 1A)	13	13	29
Flue gas treatment system (Work No. 1A)	40	70	46
Air cooled condenser (Work No. 1A)	63	18	34
Electrical switchyard, including circuit breaker and transformer (Work No. 1A)	27	9	25
Workshop building (Work No. 1A)	10	15	26
Control and administrative building (Work No. 1A)	27	11	46
Security gatehouses and weighbridges (Work No. 1B)	10	2.5	19
Substation (Work No. 2C)	80	50	34

## SCHEDULE 5

Article 9

### STREETS SUBJECT TO STREET WORKS

<i>Area</i>	<i>Street subject to street works</i>
Wakefield Metropolitan District	Kirkhaw Lane
Wakefield Metropolitan District	The unnamed road

SCHEDULE 6

Article 10

ACCESS TO WORKS

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<i>Area</i>	<i>Description of access</i>
Wakefield Metropolitan District	The location of Work No. 3

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## PROCEDURES FOR APPROVALS ETC. REQUIRED BY THE REQUIREMENTS

### Application of this Schedule

1. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

### Decision period

2.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In subparagraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the later of—
  - (i) the day immediately following the day on which the authority receives the application, and
  - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

### Further information

3.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under subparagraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with subparagraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

## **Fees**

4.—(1) The undertaker must pay the authority a fee of £97, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under subparagraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 2(1).

(3) Subparagraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In subparagraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

## **Appeal to the Secretary of State: procedure**

5.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 2(1);
- (d) a written notice given by the authority under paragraph 3(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In subparagraph (2), “the relevant day” means—

- (a) in the case of an appeal under subparagraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under subparagraph (1)(c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under subparagraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in subparagraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) Within 10 business days from the day on which the Secretary of State receives the documents mentioned in subparagraph (2), he must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under subparagraph (5)(b), the authority and any consultee—

- (a) may submit written representations in respect of the appeal to the appointed person; and
- (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under subparagraph (6), any party—

- (a) may make further representations to the appointed person in response to the representations of another party; and
- (b) must, at the same time, send a copy of any such further representations to each other party.

#### **Appeal to the Secretary of State: powers of the appointed person**

**6.**—(1) The appointed person may—

- (a) allow or dismiss the appeal;
- (b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;
- (c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
- (b) if he gives such a notice, must—
  - (i) at the same time send a copy of it to each other party, and
  - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

#### **Appeal to the Secretary of State: supplementary**

**7.**—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to subparagraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under subparagraph (4) the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Multifuel Energy Limited to construct, operate and maintain, a new electricity generating station with a nominal gross electrical capacity of up to 90MWe fuelled primarily by waste derived fuels. The generating station is to be located at the Ferrybridge Power Station site, north-west of Knottingley, West Yorkshire. The Order also grants development consent for associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in the Order, and certified in accordance with article 23, may be inspected free of charge at Knottingley Library at Knottingley Sports Centre, Hill Top, Pontefract Road, Knottingley, WF11 8EE, and at the offices of Wakefield Metropolitan District Council at Wakefield One, Burton Street, Wakefield, WF1 2EB, North Yorkshire County Council at County Hall, Northallerton, North Yorkshire, DL7 8AD, and Selby District Council at Access Selby, 8-10 Market Cross, Selby, YO8 4JS.

## APPENDIX B – EXAMINATION LIBRARY

### Ferrybridge Multifuel 2 (FM2) Power Station – EN010061

#### Examination Library

The following list of documents has been used during the course of the Examination. The documents are grouped together by examination deadline.

Each document has been given an identification number (i.e. AD-001), and all documents are available to view on the Planning Inspectorate’s National Infrastructure Planning website at the Ferrybridge Multifuel 2 (FM2) Power Station project page:

<http://infrastructure.planninginspectorate.gov.uk/ferrybridge-multifuel-2-fm2-power-station>

#### INDEX

<b>Document Type</b>	<b>Reference</b>
Application Documents	AD-xxx
Procedural Decisions	PrD-xxx
Adequacy of Consultation	AoC-xxx
Relevant Representations	RR-xxx
Correspondence	CoRR-xxx
Deadline I	D1-xxx
Deadline II	D2-xxx
Deadline III	D3-xxx
Deadline IV	D4-xxx
Deadline V	D5-xxx
Hearings	HG-xxx



<b>Application Documents</b>		<b>Date Received/ Sent</b>
<b>Application Form</b>		
AD-001	<a href="#">1.1 Application Cover Letter</a>	
AD-002	<a href="#">1.2 Application Acceptance Checklist</a>	
AD-003	<a href="#">1.3 Introduction to Application</a>	
AD-004	<a href="#">1.4 Application Form</a>	
AD-005	<a href="#">1.5 Notices for Statutory Publicity</a>	
<b>Development Consent Order</b>		
AD-006	<a href="#">2.1 Draft Development Consent Order (DCO)</a>	
AD-007	<a href="#">2.2 Explanatory Memorandum</a>	
AD-008	<a href="#">2.3 Draft DCO - Comparison to Model Provisions Version</a>	
<b>Compulsory Purchase Information</b>		
AD-009	<a href="#">3.1 Book of Reference (Parts 1-5)</a>	
AD-010	<a href="#">3.2 Statement of Reasons</a>	
AD-011	<a href="#">3.3 Funding Statement</a>	
<b>Plans, Drawings and Photographs</b>		

AD-012	<a href="#">4.1 Location Plan</a>	
AD-013	<a href="#">4.2 Order Plan</a>	
AD-014	<a href="#">4.3 Land Plan</a>	
AD-015	<a href="#">4.4 Works Plans (Sheets 1-5)</a>	
AD-016	<a href="#">4.5 Indicative Generating Station Concept Site Layout (Sheets 1-2)</a>	
AD-017	<a href="#">4.6 Indicative Generating Station Horizontal Boiler Layout (Sheets 1-2)</a>	
AD-018	<a href="#">4.7 Indicative Generating Station Vertical Boiler Layout (Sheets 1-2)</a>	
AD-019	<a href="#">4.8 Indicative Utilities Plan</a>	
AD-020	<a href="#">4.9 Indicative Shared Facilities Plan</a>	
AD-021	<a href="#">4.10 Indicative District Heating Pipeline Routes</a>	
AD-022	<a href="#">4.11 Constraints Plan</a>	
AD-023	<a href="#">4.12 Indicative Landscaping Plan</a>	
AD-024	<a href="#">4.13 Photographs and Photomontages</a>	
<b>Reports</b>		
AD-025	<a href="#">5.1 Consultation Report</a>	
AD-026	<a href="#">5.1.1 Consultation Report Appendices 3.1 - 5.2</a>	
AD-027	<a href="#">5.1.2 Consultation Report Appendices 6.1 - 7.7</a>	

AD-028	<a href="#">5.1.3 Consultation Report Appendices 7.8</a>	
AD-029	<a href="#">5.1.4 Consultation Report Appendix 7.9 - 13.2</a>	
AD-030	<a href="#">5.2 Application Site Description Document</a>	
AD-031	<a href="#">5.3 Proposed Development Description Document</a>	
AD-032	<a href="#">5.4 Statutory Nuisance Statement</a>	
AD-033	<a href="#">5.5 Grid Connection Statement</a>	
AD-034	<a href="#">5.6 Consents and Licences</a>	
AD-035	<a href="#">5.7 Planning Statement</a>	
AD-036	<a href="#">5.8 Design and Access Statement</a>	
AD-037	<a href="#">5.9 Fuel Availability and Waste Hierarchy Assessment</a>	
AD-038	<a href="#">5.10 Combined Heat and Power (CHP) Assessment</a>	
AD-039	<a href="#">5.11 Climate Change Statement</a>	
AD-040	<a href="#">5.12 Lighting Strategy</a>	
AD-041	<a href="#">5.13 Landscape Strategy</a>	
AD-042	<a href="#">5.14 Biodiversity Strategy</a>	
<b>Environmental Statement</b>		

AD-043	<a href="#">6.1 Environmental Statement Non Technical Summary</a>	
AD-044	<a href="#">6.2 Environmental Statement - Volume I (Main Report)</a>	
AD-045	<a href="#">6.3 Environmental Statement - Volume II (Figures) Cover and Contents</a>	
AD-046	<a href="#">6.3.1 ES Vol II (Figures) for Chapter 1</a>	
AD-047	<a href="#">6.3.2 ES Vol II (Figures) for Chapter 2</a>	
AD-048	<a href="#">6.3.3 ES Vol II (Figures) for Chapter 3 Part 1 of 2</a>	
AD-049	<a href="#">6.3.4 ES Vol II (Figures) for Chapter 3 Part 2 of 2</a>	
AD-050	<a href="#">6.3.5 ES Vol II (Figures) for Chapter 4</a>	
AD-051	<a href="#">6.3.6 ES Vol II (Figures) for Chapter 5</a>	
AD-052	<a href="#">6.3.7 ES Vol II (Figures) for Chapter 7</a>	
AD-053	<a href="#">6.3.8 ES Vol II (Figures) for Chapter 8</a>	
AD-054	<a href="#">6.3.9 ES Vol II (Figures) for Chapter 9</a>	
AD-055	<a href="#">6.3.10 ES Vol II (Figures) for Chapter 11 Part 1 of 2</a>	
AD-056	<a href="#">6.3.11 ES Vol II (Figures) for Chapter 11 Part 2 of 2</a>	
AD-057	<a href="#">6.3.12 ES Vol II (Figures) for Chapter 12</a>	
AD-058	<a href="#">6.3.13 ES Vol II (Figures) for Chapter 13</a>	
AD-059	<a href="#">6.3.14 ES Vol II (Figures) for Chapter 14</a>	

AD-060	<a href="#">6.3.15 ES Vol II (Figures) for Chapter 15</a>	
AD-061	<a href="#">6.3.16 ES Vol II (Figures) for Chapter 19</a>	
AD-062	<a href="#">6.4 Environmental Statement - Volume III (Appendices) Cover and Contents</a>	
AD-063	<a href="#">6.4.1 ES Appendix 1A - EIA Scoping Report</a>	
AD-064	<a href="#">6.4.2 ES Appendix 1B - EIA Scoping Opinion</a>	
AD-065	<a href="#">6.4.3 ES Appendix 1C - Schedule of Consultation Responses S42 Consultees</a>	
AD-066	<a href="#">6.4.4 ES Appendix 1D - Schedule of Consultation Responses S47 Consultees</a>	
AD-067	<a href="#">6.4.5 ES Appendix 3A - Construction Environmental Management Plan</a>	
AD-068	<a href="#">6.4.6 ES Appendix 5A - Planning Policies</a>	
AD-069	<a href="#">6.4.7 ES Appendix 7A - Transport Assessment</a>	
AD-070	<a href="#">6.4.8 ES Appendix 7B - Construction Travel Plan</a>	
AD-071	<a href="#">6.4.9 ES Appendix 7C - Operational Travel Plan</a>	
AD-072	<a href="#">6.4.10 ES Appendix 8A -Air Quality Assessment</a>	
AD-073	<a href="#">6.4.11 ES Appendix 8B - Odour Management Plan</a>	
AD-074	<a href="#">6.4.12 ES Appendix 9A - Noise Modelling Methodology</a>	
AD-075	<a href="#">6.4.13 ES Appendix 9B - Noise Survey Report</a>	

AD-076	<a href="#">6.4.14 ES Appendix 11A - Landscape and Visual Assessment Methodology</a>	
AD-077	<a href="#">6.4.15 ES Appendix 12A - Flood Risk Assessment</a>	
AD-078	<a href="#">6.4.16 ES Appendix 13A - Geotechnical Interpretive Report</a>	
AD-079	<a href="#">6.4.17 ES Appendix 13B - Coal Authority Report</a>	
AD-080	<a href="#">6.4.18 ES Appendix 14A - Habitats Regulations Assessment Screening Report</a>	
AD-081	<a href="#">6.4.19 ES Appendix 14B - Ecology Desk Study Records</a>	
AD-082	<a href="#">6.4.20 ES Appendix 14C - Phase 1 Habitat Survey Target Notes</a>	
AD-083	<a href="#">6.4.21 ES Appendix 15A - Archaeology Desk Based Assessment</a>	
AD-084	<a href="#">6.4.22 ES Appendix 16A - Site Waste Management Plan</a>	
AD-085	<a href="#">6.4.23 ES Appendix 17A - Carbon Impact Assessment</a>	
AD-086	<a href="#">6.4.24 ES Appendix 17B - WRATE Assessment</a>	
AD-087	<a href="#">6.4.25 ES Appendix 18A - Human Health Risk Assessment</a>	
<b>Other documents</b>		
AD-088	<a href="#">7.1 Natural England SoCG</a>	
AD-089	<a href="#">7.2 CAA SoCG</a>	
AD-090	<a href="#">7.3 Highways Agency SoCG</a>	
AD-091	<a href="#">7.4 English Heritage SoCG</a>	

AD-092	<a href="#">7.5 Coal Authority SoCG</a>	
AD-093	<a href="#">7.6 Canal and River Trust SoCG</a>	
AD-094	<a href="#">7.7 Environment Agency SoCG</a>	
AD-095	<a href="#">7.8 West Yorkshire Archaeology Advisory Service SoCG</a>	
AD-096	<a href="#">8.1 Master Glossary</a>	
<b>Procedural Decision</b>		
PrD-01	<a href="#">Ferrybridge Multifuel 2 (FM2) Power Station - s55 checklist</a>	
PrD-02	<a href="#">Notification of Decision to Accept Application</a>	
PrD-03	<a href="#">Rule 6</a>	
PrD-04	<a href="#">Rule 8</a>	
PrD-05	<a href="#">Examining Authority's First Written Questions and Requests</a>	
PrD-06	<a href="#">Rule 13 &amp; 16 Notification of Hearings and Accompanied Site Inspection</a>	
<b>Transboundary Documents</b>		
PrD -07	<a href="#">Second Transboundary Screening Matrix</a>	
<b>Adequacy of Consultation</b>		
AoC-01	<a href="#">AoC 1 Kirklees Council</a>	

AoC-02	<a href="#">AoC 2 Barnsley Metropolitan Borough Council</a>	
AoC-03	<a href="#">AoC 3 North Yorkshire County Council</a>	
AoC-04	<a href="#">AoC 4 Doncaster Metropolitan Borough Council</a>	
AoC-05	<a href="#">AoC 5 Wakefield Metropolitan Borough Council</a>	
AoC-06	<a href="#">AoC 6 Selby District Council</a>	
AoC-07	<a href="#">AoC 7 Leeds City Council</a>	
<b>Certificate</b>		
CERT -01	<a href="#">Certificates of Compliance with s56 and reg 13</a>	
<b>Relevant Representations</b>		
RR-01	<a href="#">Civil Aviation Authority</a>	
RR-02	<a href="#">National Grid</a>	
RR-03	<a href="#">Oakland Hill Residents Association</a>	
RR-04	<a href="#">Wakefield Council - Regeneration team</a>	
RR-05	<a href="#">Huntercombe Consultants Ltd.</a>	
RR-06	<a href="#">Paul Willans</a>	
RR-07	<a href="#">Frank A Wright</a>	
RR-08	<a href="#">John Mannering</a>	
RR-09	<a href="#">Mrs S Bage</a>	



RR-10	<a href="#">Selby District Council</a>	
RR-11	<a href="#">Natural England</a>	
RR-12	<a href="#">The Coal Authority</a>	
RR-13	<a href="#">Daniel Parry-Jones on behalf of Royal Mail Group Ltd</a>	
RR-14	<a href="#">North Yorkshire County Council</a>	
RR-15	<a href="#">Leeds and Partners</a>	
RR-16	<a href="#">Leeds and Partners</a>	
RR-17	<a href="#">Leeds City Region Enterprise Partnership</a>	
RR-18	<a href="#">Environment Agency</a>	
RR-19	<a href="#">Wakefield Council</a>	
RR-20	<a href="#">Canal &amp; River Trust</a>	
RR-21	<a href="#">Network Rail Infrastructure Limited</a>	
RR-22	<a href="#">Yorkshire Wildlife Trust</a>	
RR-23	<a href="#">Brian Whiteley</a>	
RR-24	<a href="#">Mrs J Dennis</a>	
RR-25	<a href="#">Margaret Gill</a>	

<b>Correspondence</b>		
CoRR-01	<a href="#">NHS Property Services</a>	
CoRR-02	<a href="#">Wakefield Metropolitan Borough Council</a>	
CoRR-03	<a href="#">English Heritage</a>	
CoRR-04	<a href="#">Natural England</a>	
CoRR-05	<a href="#">Multifuel Energy Limited</a>	
CoRR-06	<a href="#">Environment Agency - Correspondence received from Environment Agency prior to the issue specific hearing on the draft Development Consent Order (DCO)</a>	
CoRR-07	<a href="#">Environment Agency - Correspondence received from Environment Agency prior to the issue specific hearing on the draft Development Consent Order (DCO)</a>	
CoRR-08	<a href="#">Natural England - Correspondence received from Natural England prior to the issue specific hearing on the draft Development Consent Order (DCO)</a>	
CoRR-09	<a href="#">National Grid Electricity Transmission plc ("NGET") - Correspondence received from National Grid Electricity Transmission plc ("NGET") prior to the issue specific hearing on the draft Development Consent Order (DCO)</a>	
CoRR-10	<a href="#">Yorkshire Wildlife Trust - Correspondence received from Yorkshire Wildlife Trust prior to the issue specific hearing on the draft Development Consent Order (DCO)</a>	
CoRR-11	<a href="#">National Grid Electricity Transmission plc ("NGET") - Correspondence received from National Grid Electricity Transmission plc ("NGET") prior to the issue specific hearing on the draft Development Consent Order (DCO)</a>	
<b>Deadline I – 22 January 2015</b>		

**Written representations, comments on relevant reps, summaries of relevant reps, response to ExA 1<sup>ST</sup> Questions, Statements of Common Ground (SocGs) and Local Impact Reports (LIRs)**

D1-001	<a href="#">Wakefield Metropolitan District Council - Local Impact Report</a>	
D1-002	<a href="#">Wakefield Metropolitan District Council - Responses to the Examining Authority's first round of written questions</a>	
D1-003	<a href="#">Wakefield Metropolitan District Council - Statement of Common Ground</a>	
D1-004	<a href="#">Environment Agency - Written Representation</a>	
D1-005	<a href="#">Environment Agency - Summary of Written Representations</a>	
D1-006	<a href="#">Environment Agency - Responses to the Examining Authority's first round of written questions</a>	
D1-007	<a href="#">Multifuel Energy Limited- Correspondence from Yorkshire Wildlife Trust and Meeting Notes</a>	
D1 -008	<a href="#">Multifuel Energy Limited - Applicant's comments on Relevant Representations</a>	
D1-009	<a href="#">Multifuel Energy Limited - Statement of Common Ground between Multifuel Energy Limited and Canal &amp; River Trust</a>	
D1-010	<a href="#">Multifuel Energy Limited - Statement of Common Ground between Multifuel Energy Limited and Wakefield Metropolitan District Council</a>	
D1-011	<a href="#">Multifuel Energy Limited - Responses to the Examining Authority's first round of written</a>	

	<a href="#">questions</a>	
D1-012	<a href="#">Multifuel Energy Limited - Draft Itinerary for Accompanied Site Visit</a>	
D1-013	<a href="#">Multifuel Energy Limited - Statement of Common Ground between Multifuel Energy Limited and Environment Agency</a>	
D1-014	<a href="#">Multifuel Energy Limited - Statement of Common Ground between Multifuel Energy Limited and Selby District Council</a>	
D1-015	<a href="#">Selby District Council - Responses to the Examining Authority's first round of written questions</a>	
D1-016	<a href="#">Selby District Council &amp; North Yorkshire County Council - Local Impact Report</a>	
D1-017	<a href="#">National Grid Electricity Transmission - Responses to the Examining Authority's first round of written questions</a>	
D1-018	<a href="#">National Grid Electricity Transmission - Written Representation</a>	
D1-019	<a href="#">Canal &amp; River Trust - Written Representation and responses to the Examining Authority's first round questions</a>	
<b>Deadline II – 17 February 2015</b>		
<b>Comments on Responses to ExA 1<sup>ST</sup> Questions, Comments on Written Representations etc</b>		
D2-001	<a href="#">Multifuel Energy Limited -Applicant's Comments on Relevant Representations</a>	

D2-002	<a href="#">Multifuel Energy Limited - Applicant's Comments on Local Impact Reports, Responses to the Examining Authority's First Written Questions and Written Representations</a>	
D2-003	<a href="#">Multifuel Energy Limited - Draft Development Consent Order (DCO) - Clean Version – Rev 2.0</a>	
D2-004	<a href="#">Multifuel Energy Limited - Draft Development Consent Order (DCO) - Track Change Version – Rev 2.0</a>	
D2-005	<a href="#">Multifuel Energy Limited - Draft DCO - Comparison to Model Provisions Version – Rev 2.0</a>	
D2-006	<a href="#">Multifuel Energy Limited -Applicant's Response to the Examining Authority's First Written Questions</a>	
D2-007	<a href="#">Multifuel Energy Limited - Book of Reference (Parts 1-5</a>	
D2-008	<a href="#">Multifuel Energy Limited - Explanatory Memorandum - Clean Version – Rev 2.0</a>	
D2-009	<a href="#">Multifuel Energy Limited - Explanatory Memorandum - Track Change Version – Rev 2.0</a>	
<b>Deadline III – 12 March 2015</b>		
<b>Responses to comments on Written Representations and Local Impact Reports, Comments on any other information submitted at Deadline II etc</b>		
D3-001	<a href="#">Multifuel Energy Limited - Indicative Landscaping Plan – clean version – Rev 2.0. Accepted as late submission by the Examining Authority</a>	

D3-002	<a href="#">Multifuel Energy Limited - Indicative Landscaping Plan – changes marked version – Rev 2.0. Accepted as late submission by the Examining Authority</a>	
D3-003	<a href="#">Multifuel Energy Limited - Consents and Licences required under Other Legislation – Rev 2.0. Accepted as late submission by the Examining Authority</a>	
D3-004	<a href="#">Multifuel Energy Limited - Landscape Strategy – Clean Version – Rev 2.0. Accepted as late submission by the Examining Authority</a>	
D3-005	<a href="#">Multifuel Energy Limited -Landscape Strategy – Tracked Change Version – Rev 2.0. Accepted as late submission by the Examining Authority</a>	
D3-006	<a href="#">Multifuel Energy Limited - Biodiversity Strategy – Clean Version – Rev 2.0. Accepted as late submission by the Examining Authority</a>	
D3-007	<a href="#">Multifuel Energy Limited - Biodiversity Strategy – Tracked Change Version – Rev 2.0. Accepted as late submission by the Examining Authority</a>	
D3-008	<a href="#">Multifuel Energy Limited - Statement of Common Ground (SoCG) – Wakefield Metropolitan District Council (WMDC) - Draft – Rev 4.0. Accepted as late submission by the Examining Authority</a>	
D3-009	<a href="#">Multifuel Energy Limited - Application Document Index. Accepted as late submission by the Examining Authority</a>	
<b>Deadline IV – 2 April 2015</b>		
<b>Applicant’s revised draft DCO, Comments on any other information submitted at Deadline III etc</b>		
D4-001		

	<a href="#"><u>Michael Elphinstone on behalf of Margaret Gill - Written summaries of oral cases put at Issue Specific Hearing held on 18 March 2015. Accepted as late submission by the Examining Authority</u></a>	
D4-002	<a href="#"><u>Multifuel Energy Limited - Explanatory Memorandum - Clean Version – Rev 3.0</u></a>	
D4-003	<a href="#"><u>Multifuel Energy Limited - Explanatory Memorandum - Track Change Version (Changes from Deadline 2) – Rev 3.0</u></a>	
D4-004	<a href="#"><u>Multifuel Energy Limited - Draft Development Consent Order (DCO) - Clean Version – Rev 3.0</u></a>	
D4-005	<a href="#"><u>Multifuel Energy Limited - Draft Development Consent Order (DCO) - Track Change (All Changes) – Rev 3.0</u></a>	
D4-006	<a href="#"><u>Multifuel Energy Limited -Draft Development Consent Order (DCO) - Comparison to Model Provisions Version – Rev 3.0</u></a>	
D4-007	<a href="#"><u>Multifuel Energy Limited - Draft Development Consent Order (DCO) - Track Change Version (Changes from Deadline 2) – Rev 3.0</u></a>	
D4-008	<a href="#"><u>Multifuel Energy Limited - Statement of Common Ground (SoCG) - Wakefield Metropolitan District Council</u></a>	
D4-009	<a href="#"><u>Multifuel Energy Limited - Applicant’s Written Summaries of Oral Submissions made to the Issue Specific Hearing on 18 March 2015</u></a>	
D4-010	<a href="#"><u>Wakefield Metropolitan District Council - Wakefield Metropolitan District Council- Written summaries of oral cases put at Issue-specific hearing held on 18 March 2015</u></a>	
D4-011	<a href="#"><u>Paul Willans -Written summaries of oral cases put at Issue Specific Hearing held on 18 March 2015. Accepted as late submission by the Examining Authority</u></a>	

<b>Deadline V – 17 April 2015</b>		
<b>Any other information requested by the ExA for this deadline, Comments on applicant’s revised draft DCO, and on any other information submitted at Deadline IV etc</b>		
D5-001	<a href="#">Wakefield Metropolitan District Council Signed Statement of Common Ground between Multifuel Energy Limited and Wakefield Metropolitan District Council</a>	
D5-002	<a href="#">Multifuel Energy Limited - Signed Statement of Common Ground (SoCG) with Wakefield Metropolitan District Council (WMDC).</a>	
D5-003	<a href="#">Multifuel Energy Limited - Applicant’s Comments on Deadline IV Submissions</a>	
D5-004	<a href="#">Multifuel Energy Limited -Applicant’s comments on Deadline IV Submissions – Rev 2.0. Accepted as late submission by the Examining Authority</a>	
<b>Hearings, Site Visit and Preliminary Meeting Documents</b>		
<b>Preliminary Meeting</b>		
HG-001	<a href="#">Preliminary Meeting Audio</a>	
HG-002	<a href="#">Preliminary Meeting Note</a>	
<b>Site Visit</b>		
HG-003	<a href="#">Itinerary for accompanied site visit - Tuesday 17 March 2015</a>	
<b>Hearings</b>		
HG-004	<a href="#">Agenda for Open Floor Hearing – 17 March 2015</a>	



HG-005	<a href="#">Agenda for Issue Specific Hearing on the DCO on 18 March 2015</a>	
HG-006	<a href="#">Audio recording of the Open Floor Hearing</a>	
HG-007	<a href="#">Part 1 of the audio recording of the Issue Specific Hearing -Issue Specific Hearing on the draft Development Consent Order</a>	
HG-008	<a href="#">Part 2 of the audio recording of the Issue Specific Hearing – Issue Specific Hearing on the draft Development Consent Order</a>	

## APPENDIX C

### EVENTS IN THE EXAMINATION

The list below contains the main events that occurred and procedural decisions that were taken during the examination

<b>Date</b>	<b>Examination Event</b>
<b>Thursday 4 December 2014</b>	Examination begins
<b>Thursday 11 December 2014</b>	Issue by ExA of: <ul style="list-style-type: none"><li>• Examination timetable</li><li>• Requests for Statements of Common Ground and Local Impact Reports</li></ul>
<b>Thursday 18 December 2014</b>	Issue by ExA of: <ul style="list-style-type: none"><li>• ExA's first written questions</li></ul>
<b>Thursday 22 January 2015</b>	<b>Deadline 1</b>  Deadline for receipt by the ExA of: <ul style="list-style-type: none"><li>• Comments on relevant representations (RRs)</li><li>• Summaries of all RR's exceeding 1500 words</li><li>• Written representations (WRs) by all interested parties</li><li>• Summaries of all WRs exceeding 1500 words</li><li>• Local Impact Report from any local authorities</li><li>• Updated Statements of Common Ground (SoCG) and SoCG requested by ExA – see Annex C of Rule 8 letter dated 11 December 2014</li><li>• Responses to ExA's first written questions</li><li>• Submissions from interested parties recommending items for the itinerary for the accompanied site visit</li></ul> <b>Notifications</b> <ul style="list-style-type: none"><li>• Notification by interested parties of wish to speak at an Open floor hearing.</li><li>• Notification by interested parties of their intention to attend the accompanied site visit.</li></ul>

<p><b>Tuesday 17 February 2015</b></p>	<p><b>Deadline 2</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs</li> <li>• Responses to comments on RRs</li> <li>• Comments on Local Impact Reports</li> <li>• Comments on responses to ExA's first written questions</li> <li>• Any revised draft DCO from applicant</li> <li>• Any other information requested by the ExA</li> </ul>
<p><b>Wednesday 18 February 2015</b></p>	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> <li>• Notification of dates for hearings and accompanied site visit</li> </ul>
<p><b>Thursday 12 March 2015</b></p>	<p><b>Deadline 3</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Responses to comments on WRs</li> <li>• Responses to comments on Local Impact Reports</li> <li>• Comments on any revised draft DCO from applicant</li> <li>• Comments on any other information submitted at Deadline 2</li> <li>• Request to be heard at any issue specific hearing</li> <li>• Any other information requested by the ExA</li> </ul>
<p><b>Tuesday 17 March 2015</b></p>	<p>Accompanied site inspection</p>
<p><b>Tuesday 17 March 2015</b></p>	<p>Open floor hearing</p>
<p><b>Wednesday 18 March 2015</b></p>	<p>Issue specific hearing on draft DCO</p>
<p><b>Thursday 2 April 2015</b></p>	<p><b>Deadline 4</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Applicant's revised draft DCO</li> <li>• Written summaries of oral cases put at hearings</li> <li>• Any information requested by the ExA at hearings</li> <li>• Any other information requested by the ExA</li> <li>• Comments on any other information submitted at Deadline 3</li> </ul>

<p><b>Friday 17 April 2015</b></p>	<p><b>Deadline 5</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on applicant's revised draft DCO</li> <li>• Any other information requested by the ExA for this deadline</li> <li>• Comments on any other information submitted at Deadline 4</li> </ul>
<p><b>Wednesday 29 April 2015</b></p>	<p>Close of Examination</p>

## APPENDIX D

### LIST OF ABBREVIATIONS

AADT	Annual Average Daily Traffic Flow
AQMA	Air Quality Measurement Area
AQS Regulations	Air Quality Standards Regulations 2010
BAP	Biodiversity Action Plan
BAT	Best Available Technology
BoR	Book of Reference
CA	Coal Authority
CAA	Civil Aviation Authority
CRT	Canal and River Trust
CCR	Carbon capture readiness
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
COMAH	Control of Major Accident Hazards
COSHH	Control of Substances Hazardous to Health
CPNI	Centre for the Protection of National Infrastructure
DCO	Development Consent Order
DECC	Department of Energy and Climate Change
DMRB	Design Manual for Roads and Bridges
DNO	Distribution Network Operator
DTI	Department of Trade and Industry
EA	Environment Agency
EEA	European Economic Area
EfW	Energy from Waste
EH	English Heritage
EHO	Environmental Health Officer
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EP	Environmental Permitting
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EPS	Emission Performance Standards
EPUK	Environmental Protection UK
ES	Environmental Statement
ExA	Examining Authority
FGT	Flue Gas Treatment
FM1	Ferrybridge Multifuel 1
FM2	Ferrybridge Multifuel 2
HA	Highways Agency
HGV	Heavy Goods Vehicle
HSE	Health and Safety Executive
IED	Industrial Emissions Directive
IPC	Infrastructure Planning Commission
IPPC	Integrated Pollution Prevention and Control
LCPD	Large Combustion Plant Directive
LIR	Local Impact Report
MW	Megawatts
MWe	Megawatts Electrical

NAI	Nearest Appropriate Installation
NE	Natural England
NERC	Natural Environment and Rural Communities
NG	National Grid
NGET	National Grid Electricity Transmission
NO2	Nitrogen Dioxide
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NTS	Non-Technical Summary
NYCC	North Yorkshire County Council
PA2008	Planning Act 2008
PHE	Public Health England
PPG	Planning Practice Guidance
PPS	Planning Policy Statement
SDC	Selby District Council
SoCG	Statement of Common Ground
SPA	Special Protection Area
SSE	SSE Generation Ltd, part of the SSE plc Group
SSECC	Secretary of State for Energy and Climate Change
SSSI	Site of Special Scientific Interest
SWMP	Site Waste Management Plan
TAN	Technical Advice Note
WFD	Water Framework Directive
WMDC	Wakefield Metropolitan District Council
WRATE	Waste and Resources Assessment Tool
WTI	WTI/EFW Holdings Ltd, a subsidiary of Wheelabrator Technologies Inc.
WYAAS	West Yorkshire Archaeological Advisory Service
YWT	Yorkshire Wildlife Trust