Net Zero Teesside Project

Planning Inspectorate Reference: EN010103

Land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, Teesside

The Net Zero Teesside Order

Document Reference: 2.2 Explanatory Memorandum

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(c)

Applicants: Net Zero Teesside Power Limited (NZT Power Ltd) & Net Zero North Sea Storage Limited (NZNS Storage Ltd)

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GLOSSARY

Abbreviation	**Description**
AD Guidance	Guidance on associated development applications for major infrastructure projects' (April 2013)
Applicants	Together NZT Power and NZNS Storage
Application (or DCO Application)	The application for a DCO made to the SoS under Section 37 of PA 2008 in respect of the Proposed Development, required pursuant to Section 31 of the PA 2008 because the Proposed Development is a NSIP under Section 14(1)(a) and Section 15 of PA 2008 by virtue of being an onshore generating station in England or Wales of electrical capacity of more than 50 megawatts, and which does not generate electricity from wind, and by the Section 35 Direction
Associated Development	Defined under S.115(2) of PA 2008 as development which is associated with the principal development and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development
BEIS	Department for Business, Energy, and Industrial Strategy
CCP	Carbon capture plant
CCGT	Combined cycle gas turbine
CCUS	Carbon capture usage and storage

DCO	A Development Consent Order made by the relevant Secretary of State pursuant to the PA 2008 to authorise a NSIP. A DCO can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition
EIA	Environmental Impact Assessment - the assessment of the likely significant environmental effects of a development, undertaken in accordance with the EIA Regulations
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) setting out how the environmental assessment of NSIPs must be carried out and the procedures that must be followed
Electricity Generating Station (or CCGT / Low Carbon Electricity Generating Station)	A new electricity generating station fuelled by natural gas and with a gross output capacity of up to 860 megawatts
EPC Contractor	Engineering, Procurement and Construction contractor who will undertake the detailed engineering design, procurement and deliver the construction of the Proposed Development
ES	Environmental Statement, documenting the findings of the EIA
Land Plans	The plans showing the land that is required for the Proposed Development, and the land over which interests or rights in land are sought as part of the Order
MLWS	Mean Low Water Springs
NGET	National Grid Electricity Transmission
NGG	National Grid Gas
NSIP	Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under PA 2008
NZT Power	Net Zero Teesside Power Limited
NZNS Storage	Net Zero North Sea Storage Limited
NZT	Net Zero Teesside - the name of the Proposed Development
Open Space Land	The parts of the Order Land which are considered to be open space for the purposes of section 132 of the PA 2008 and as shown hatched blue on the Land Plans
Order	The Net Zero Teesside Order, being the DCO that would be made by the Secretary of State authorising the Proposed Development, a draft of which has been submitted as part of the Application
Order Land	The land which is required for, or is required to facilitate, or is incidental to, or is affected by, the Proposed Development and

	over which powers of compulsory acquisition are sought in the Order
Order Limits	The limits of the land to which the Application relates and shown on the Land Plans and Works Plans within which the Proposed Development must be carried out and which is required for its construction and operation
PA 2008	The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre- application consultation and publicity, the examination of applications and decision making by the Secretary of State
PCC Site	Power, Capture and Compression Site - the part of the Site that will accommodate the Electricity Generating Station, along with the CCP and high- pressure compressor station
Proposed Development (or Project)	The development to which the Application relates and which requires a DCO, and as set out in Schedule 1 to the Order
Site (or Proposed Development Site)	The land corresponding to the Order Limits which is required for the construction and operation of the Proposed Development
Requirements	The 'requirements' at Schedule 2 to the Order that, amongst other matters, are intended to control the final details of the Proposed Development as to be constructed and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts
Section 35 Direction	The direction under section 35 of the PA 2008 dated 17 January 2020 from the SoS that the Specified Elements together with any matters/development associated with them should be treated as development for which development consent under the PA 2008 is required
Sembcorp	Sembcorp Utilities (UK) Limited
SoS	The Secretary of State - the decision maker for DCO applications and head of Government department. In this case the SoS for the Department for Business, Energy, and Industrial Strategy
Specified Elements	Those elements of the Proposed Development that, by virtue of the Section 35 Direction, are to be treated as development for which development consent under the PA 2008 is required being: the CO_2 gathering network, including the CO_2 pipeline connections from the proposed CCGT Electricity Generating Station and industrial facilities on Teesside to transport the captured CO_2 (including the connections under the tidal River Tees), a high-pressure carbon dioxide compressor station to receive captured CO_2 from the CO_2 gathering network, and a section of the CO_2 transport pipeline for the onward transport of the captured CO_2 to a suitable offshore geological storage site
STDC	South Tees Development Corporation

Work No.	Work number, a component of the Proposed Development, described at Schedule 1 to the Order
Works Plans	Plans showing the numbered works referred to at Schedule 1 to the Order and which together make up the Proposed Development

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1.0. INTRODUCTION

1.1. Overview

1.1.1. This explanatory memorandum (Document Ref. 2.2) has been prepared on behalf of Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (the 'Applicants'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that was submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under Section 37 of 'The Planning Act 2008' (the 'PA 2008') on 19 July 2021. The SoS accepted the Application for examination on 16 August 2021.

1.1.2. The Applicants are seeking development consent for the construction, operation and maintenance of the Net Zero Teesside Project ('NZT'), including associated development (together the 'Proposed Development') on land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, on Teesside (the 'Site'). The former Steel Works site, along with other land required for the Proposed Development, lies within the boundary of the land controlled by the South Tees Development Corporation ('STDC'), which is now known as 'Teesworks'.

1.1.3. A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under Sections 14(1)(a) and 15 of the PA 2008, associated development under Section 115(1)(b) and by direction under Sections 35(1) and 35ZA of the same Act. The DCO, if made by the SoS, would be known as the 'Net Zero Teesside Order' (the 'Order').

1.1.4. The Proposed Development will be the UK's first commercial scale, full chain Carbon Capture, Usage and Storage project and will initially capture up to 4 million tonnes (Mt) of carbon dioxide (CO_2) emissions per annum. It will comprise a number of elements, including a new gas-fired Electricity Generating Station with ~~post-~~ post-combustion carbon capture plant; gas, water and electricity connections (for the generating station); a CO_2 pipeline network (a 'gathering network') for collecting CO_2 from a cluster of local industries on Teesside; a CO_2 compressor station (for the compression of the CO_2) and a CO_2 export pipeline.

1.1.5. The CO_2 captured from the Electricity Generating Station and local industries will be compressed and then transported (via the export pipeline) for secure storage within the Endurance saline aquifer located 145 kilometres offshore from Teesside under the North Sea. The export pipeline has the capacity to carry up to 10Mt of CO_2 per annum. The Proposed Development will therefore make a significant contribution toward the UK reaching its greenhouse gas emissions target by 2050.

1.2. The Applicants

1.2.1. NZT encompasses proposals to both decarbonise electricity generation and a cluster of carbon intensive industries on Teesside. In line with the CCUS business models published by BEIS in December 2020, there will be separate entities who will be responsible for:-

- electricity generation with post-combustion carbon capture (including the gas; water and electricity connections);
- CO_2 gathering (from industrial emitters), CO_2 compression and CO_2 export and storage; and
- industrial (including hydrogen production) carbon capture and connections to the CO_2 gathering network.

1.2.2. The entities are set out in **Table 1.1** below:

Table 1.1: NZT Entities

Onshore works scope	Partnership	NZT Entity	Within the scope of the DCO Application?
Electricity Generating Station with post-combustion carbon capture (including the gas, water and electricity connections)	bp* and Equinor	Net Zero Teesside Power Limited	Yes
CO_2 gathering network, CO_2 compression and the onshore section of CO_2 export pipeline	bp*, Equinor, National Grid, Shell and Total	Net Zero North Sea Storage Limited	Yes
Industrial and hydrogen production carbon capture and connection to the CO_2 gathering network	Individual industrial emitters	N/A	No

*Operator on behalf of the relevant Partnership

1.2.3. NZT is being promoted by Net Zero Teesside Power Limited ~~(~~('NZT Power') and Net Zero North Sea Storage Limited (~~"~~'NZNS Storage'). NZT Power and NZNS Storage (together the Applicants for the purposes of the DCO Application) have been incorporated on behalf of bp as operator of the two Partnerships.

1.2.4. The electricity generation with post-combustion carbon capture Partnership comprises bp and Equinor, with bp leading as operator. NZT Power will be responsible for the Proposed Development in so far as it relates to the construction, operation and eventual decommissioning of the Electricity Generating Station together with its carbon capture plant (both within the scope of the DCO Application).

1.2.5. The CO_2 gathering network, CO_2 compression and onshore section of CO_2 export pipeline Partnership comprises bp, Equinor, National Grid, Shell and Total, with bp leading as operator. NZNS Storage will be responsible for the Proposed Development in so far as it relates to the construction, operation and eventual decommissioning of the equipment required for the high-pressure compression of CO_2 from the Electricity Generating Station and industrial emitters via the CO_2 gathering network and the onshore section of the CO_2 export pipeline (these are all within the scope of the DCO Application).

1.2.6. NZNS Storage will also be responsible for the offshore elements of NZT, comprising the offshore section of the CO_2 export pipeline (below Mean Low Water Springs ('MLWS')) to a suitable offshore geological CO_2 storage site under the North Sea, CO_2 injection wells and associated infrastructure. The offshore elements of NZT (with the exception of the gas

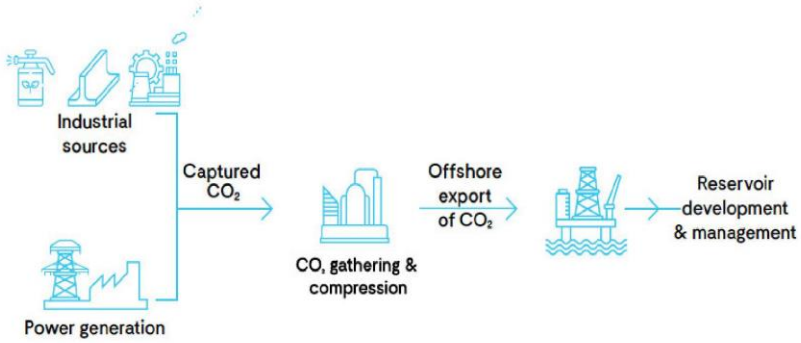
and CO_2 pipeline crossings of the River Tees and the water outfall from the Electricity Generating Station) do not form part of the DCO Application.

1.3. What is Carbon Capture, Usage and Storage?

1.3.1. Carbon Capture, Usage and Storage ('CCUS') is a process that removes CO_2 emissions at source, for example emissions from an Electricity Generating Station or industrial installation, and then compresses the CO_2 so that it can be safely transported to secure underground storage sites. It is then injected into a layer of solid rock filled with interconnected pores where the CO_2 becomes trapped and locked in place, preventing it from being released into the atmosphere. Figure 1.1 below shows what is involved in the process.

Figure 1.1: CCUS Process

Figure 1.1: CCUS Process



1.3.2. The technologies used in CCUS are proven and have been used safely across the world for many years. Storage sites are located several kilometres underground and are subject to stringent tests to ensure that they are geologically suitable. In the UK, it is expected that the storage sites will be located offshore, in areas such as the North Sea.

1.3.3. CCUS is one of a number of technologies that are crucial to reducing CO_2 emissions and combatting global warming. The UK Government has committed to achieving 'Net Zero' in terms of greenhouse gas emissions by 2050. This is a legally binding target.

1.4. The Site

1.4.1. The Site lies within the administrative boundaries of both Redcar and Cleveland Borough Council and Stockton-on-Tees Borough Council. It also partly lies within the boundary of the Teesworks area that is controlled by the STDC.

1.4.2. Most of the Site lies within the administrative area of Redcar and Cleveland Borough Council, although parts of Site (for the Electricity Generating Station's gas supply connection to the National Transmission System for gas and the CO_2 gathering network) cross the River Tees into the administrative area of Stockton-on-Tees Borough Council. At this location, the River Tees is tidal. In addition, there are elements of the Site which extend into South Gare, Coatham Sands and the North Sea. Those sections of the Site that are below MLWS are outside the jurisdiction of either local authority being part of the UK marine area.

1.4.3. The Site extends to approximately 462 hectares ('ha') in area. Much of it comprises previously developed (including part of the former Redcar Steel Works Site) and existing industrial land, some of which was reclaimed from the Tees Estuary in the late C19th and during the C20th. The Site is relatively flat and low-lying and sits at a level of between approximately 4 and 12 metres Above Ordnance Datum ('AOD'). The area surrounding the Site is largely characterised by industrial and commercial uses, although there are open areas of land to the north in the form of South Gare and Coatham Sands, which are used for recreational purposes and that are of nature conservation importance.

1.4.4. A more detailed description of the Site and its surroundings is provided at Chapter 3 'Description of the Existing Environment' in the Environmental Statement ('ES') Volume I (Document Ref. 6.2).

1.5. The Proposed Development

1.5.1. The Proposed Development will work by capturing CO_2 from the Electricity Generating Station in addition to a cluster of local industries on Teesside and transporting it via a CO_2 export pipeline to the Endurance saline aquifer under the North Sea. The Proposed Development will initially capture and transport up to 4Mt of CO_2 per annum, although the CO_2 export pipeline has the capacity to accommodate up to 10Mt of CO_2 per annum thereby allowing for future expansion.

1.5.2. The Proposed Development comprises the following elements:

- a combined cycle gas turbine ('CCGT') Electricity Generating Station with an electrical output of up to 860 megawatts and post-combustion carbon capture plant;
- cooling water, gas and electricity grid connections and infrastructure for the Electricity Generating Station;
- a CO_2 gathering network (including connections under the tidal River Tees) to collect and transport the captured CO_2 from industrial emitters to a CO_2 compressor station (the industrial emitters using the gathering network will be responsible for consenting their own carbon capture plant and connections to the gathering network);
- a high-pressure CO_2 compressor station to receive and compress the captured CO_2 from the Electricity Generating Station and gathering network before it is transported offshore; and
- a dense phase CO_2 export pipeline for the onward transport of the captured and compressed CO_2 to the Endurance saline aquifer under the North Sea.

1.5.3. The Electricity Generating Station, its post-combustion carbon capture plant and the CO_2 compressor station will be located on part of the STDC Teesworks area (on part of the former Redcar Steel Works Site). The CO_2 export pipeline will also start in this location before heading offshore. The Electricity Generating Station connections and the CO_2 gathering network will require corridors of land within both Redcar and Stockton-on-Tees, including crossings beneath the River Tees.

1.5.4. All of the above elements are included in the scope of the DCO Application, with the exception of the CO_2 export pipeline, where only the onshore section of pipeline above MLWS is included. The CO_2 export pipeline below MLWS and the CO_2 storage site under the North Sea (the Endurance saline aquifer) will be the subject of separate consent applications, including under the Petroleum Act 1998 and the Energy Act 2008. These applications will be supported by an Offshore Environmental Statement.

1.5.5. The ancillary development required in connection with and subsidiary to the above elements of the Proposed Development is detailed in Schedule 1 of the draft DCO (Document Ref. 2.1). A more detailed description of the Proposed Development is provided at Schedule 1 'Authorised Development' of the draft DCO and Chapter 4 'The Proposed Development' in ES Volume I (Document Ref. 6.2) and the areas within which each of the main elements of the Proposed Development are to be built are denoted by the coloured and hatched areas on the Works Plans (Document Ref. 4.4).

1.6. The Purpose and Structure of this Document

1.6.1. The purpose of this document is to explain the effect and purpose of the provisions in the Order and is provided as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

1.6.2. It also identifies and explains departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ('the model provisions'). Whilst the power for the Secretary of State to designate, and the requirement to have regard to model provisions, have been removed, the Applicants consider it is still relevant to explain variations made in the Order compared to the model provisions.

1.6.3. This explanatory memorandum should be read alongside the Order (Document Ref. 2.1) and the various documents submitted in respect of the DCO Application. Document references in the explanatory memorandum relate to the Applicants referencing as set out in the Application Guide (Document Ref. 1.2).

2.0. PURPOSE AND NEED FOR THE ORDER

2.1. Nationally Significant Infrastructure Project

2.1.1. The Proposed Development includes a CCGT Electricity Generating Station with a gross output of up to 860 MW. As this element of the Proposed Development meets the criteria of being an onshore generating station with a capacity of over 50 MW, located in England, and which does not generate electricity from wind, it is a NSIP under sections 14(1)(a) and 15 of the PA 2008.

2.1.2. The Applicants therefore require development consent under the PA 2008 in order to construct and operate the CCGT Electricity Generating Station. Development consent may only be granted by order, following an application to the Secretary of State pursuant to section 37 of the PA 2008.

2.1.3. The following Work Nos. as set out in Schedule 1 (authorised development) of the Order constitute "development for which development consent is required" (as a NSIP):

- Work No. 1 - an electricity generating station fuelled by natural gas and with a gross output capacity of up to 860MW comprising:
- Work No. 1A - a CCGT plant;
- Work No. 1B - CCGT and CCP cooling and utilities infrastructure;
- Work No. 1C - CCP;
- Work No. 1D - administration, control room and stores; and
- Work No. 1E - ancillary works in connection with Work Nos. 1A, 1B, 1C and 1D.

2.2. Section 35 Direction

2.2.1. On 17 January 2020 the SoS gave a direction under section 35 of the PA 2008 (the 'Section 35 Direction') that certain elements of the Proposed Development (the 'Specified Elements') should be treated as development for which development consent under the PA 2008 is required. The Specified Elements of the Proposed Development are:

- The CO_2 gathering network, including the CO_2 pipeline connections from the proposed CCGT Electricity Generating Station and industrial facilities on Teesside to transport the captured CO_2 (including the connections under the tidal River Tees). Work No. 6 in the Order comprises of a CO_2 gathering network, including the CO_2 pipeline connections from the proposed CCGT Electricity Generating Station, to transport the captured CO_2 (including the connections under the tidal River Tees). Other than this, no Work Nos. in the Order include any CO_2 pipeline connections from industrial facilities on Teesside to the CO_2 gathering network.

- A high-pressure carbon dioxide compressor station to receive captured CO_2 from the CO_2 gathering network. Work No. 7 in the Order comprises of this infrastructure; and

- A section of the CO_2 transport pipeline for the onward transport of the captured CO_2 to a suitable offshore geological storage site. Work No. 8 in the Order comprises of this infrastructure, which extends from Work No. 7 to the MLWS.

2.2.2. The section of the CO_2 export pipeline seaward of the MLWS and the CO_2 storage site in the North Sea is not within the Order Land or the Order Limits and will be subject to separate consent applications. See paragraph 1.5.4 and Other Consents and Licences (Document Ref. 5.10) for details.

2.2.3. The Section 35 Direction specifies that it only applies to the Specified Elements (i.e. development consent is only required for them) in so far as they form part of the project which includes a generating station that is a NSIP as defined in the PA 2008 and as described in the Applicant's letter of 25 November 2019. That condition is satisfied as the Proposed Development includes Work No. 1.

2.2.4. As a result of the Section 35 Direction, development consent must be obtained in order to carry out the development in Works Nos. 6 to 8 (inclusive), and a DCO Application must be made to the Secretary of State (section 37 of the PA 2008).

2.2.5. A copy of the Section 35 Direction is enclosed at Appendix 1.

2.3. Matters for which development consent is sought

2.3.1. Section 115(1) of the PA 2008 provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The third limb - paragraph (c) - is not relevant here. All the development in the Order must therefore come within either Section 115(1)(a) or 115(1)(b), in order for the Secretary of State to have power to grant development consent for it.

2.3.2. By virtue of being a NSIP, Work No. 1 is "development for which development consent is required" under section 115(1)(a) of the PA 2008.

2.3.3. By virtue of the Section 35 Direction, Work No. 6 to 8 (inclusive) also fall under section 115(1)(a) of the PA 2008. Due to the wording of the Section 35 Direction any development which would otherwise be associated development alongside Work Nos. 6 to 8 (pursuant to Section 115(1)(b)) also in fact comes within Section 115(1)(a) - the Section 35 Direction provides that "...the Specified Elements, together with any matters/development associated

with them, are to be treated as development for which development consent is required" (emphasis added).

2.3.4. The Order also includes other development which is not in itself a NSIP under the PA 2008 and has not been included within the description of the Specified Elements under the Section 35 Direction:

- Work No. 2 - a gas connection, being works for the transport of natural gas to Work No. 1A, comprising:
- Work No. 2A - underground high pressure gas supply pipeline; and
- Work No. 2B - above ground installations ('AGI') connecting Work No.2A to the National Transmission System;
- Work No. 3 - works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system, comprising:
  - Work No. 3A - an electrical connection from Work No. 1A to Work No. 3B, comprising 275 kilovolts underground and overground electrical cables and control systems cables, and the connection between Work No. 3B and the National Grid Tod Point substation; and
  - Work No. 3B - a new electrical substation at Tod Point, including electrical equipment, buildings, enclosures and extension works at the National Grid substation.
- Work No. 4 - water supply connection works to provide cooling and make-up water to Work No. 1;
- Work No. 5 - wastewater disposal works in connection with Work No. 1, comprising:
  - Work No. 5A - repair and upgrade of the existing water discharge infrastructure to the Tees Bay; or
  - Work No. 5B - a new water discharge pipeline to the Tees Bay; and
  - Work No. 5C - up to two new wastewater pipelines between Bran Sands Wastewater Treatment Plant and Work No. 1.
- Work No. 9: temporary construction and laydown areas, comprising:
  - Work No. 9A - Teesworks laydown;
  - Work No. 9B - Navigator Terminal and Seal Sands laydown;
  - Work No. 9C - INEOS laydown;
  - Work No. 9D - Saltholme laydown;
  - Work No. 9E - Saltholme laydown; and
  - Work No. 9F - Haverton Hill laydown.

- Work No. 10: access and highway improvements, comprising works to create, improve, repair or maintain access roads, haul roads and access points.

2.3.5. This development is not itself "development for which development consent is required" and so does not fall under section 115(1)(a) of the PA 2008. However it is clear that all of those Work Nos~~.~~ (2, 3, 4, 5, 9 and 10) comprise development that is associated with Work No. 1 and are required in order to carry out Work No. 1 (and in the case of Work Nos. 9 and 10, are also required to carry out all other Work Nos.).

2.3.6. Schedule 1 of the Order also includes details of further development that may be carried out in connection with Work Nos. 1 to 10. The further development listed in Schedule 1 is not exhaustive and other works required in connection with Work Nos. 1 to 10 may be carried out provided they are within the parameters of the environmental impact assessment ('EIA').

2.3.7. It is clear that all of the development set out in Schedule 1 of the Order (other than the CCGT Electricity Generating Station comprising Work No. 1 and Specified Elements comprising Work Nos. 6 to 8) comes within the policy and criteria in the 'Guidance on associated development applications for major infrastructure projects' (April 2013) (the 'AD Guidance') and is capable of being granted development consent by the Secretary of State either by:

- Section 115(1)(a) of the PA 2008 by virtue of being "matters/development" associated with the Specified Elements and therefore 'development for which development consent is required' under the requirements of the Section 35 Direction; or

- Section 115(1)(b) of the PA 2008 by virtue of being development associated with the CCGT Electricity Generating Station.

2.3.8. Applying the AD Guidance, all of the development set out in Schedule 1 of the Order (other than CCGT Electricity Generating Station and Specified Elements) is:

- directly associated with the CCGT Electricity Generating Station and/or Specified Elements ("development for which development consent is required") as it is required for the construction, maintenance or operation of this infrastructure, or to mitigate its impacts (paragraph 5(i) of the AD Guidance);

- subordinate to the CCGT Electricity Generating Station and/or Specified Elements

- none of the development is an aim in themselves (paragraph 5(ii));

- proportionate to the nature and scale of the CCGT Electricity Generating Station and/or Specified Elements (paragraph 5(iv));

- of a nature which is typically brought forward alongside a gas-fired generating station or a CCUS project (paragraph 6);

- listed in or analogous to the types of associated development in Annexes A and B to the AD Guidance. Those annexes mention (of relevance to Work Nos. 2, 3, 4, 5, 9 and 10): -

- Formation of new or improved vehicular or pedestrian access (to stations, work sites etc), whether temporary or permanent;

- Highway / junction improvements;

- Alteration or construction of roads, footpaths and bridleways;
- Parking spaces for workers and users of the principal development;
- Temporary haul roads, vehicle-marshalling facilities and laydown areas;
- Electricity networks, water/wastewater networks, fuel and pipe-line networks and telecommunications networks;
- Development undertaken for the purpose of addressing impacts;
- Hard and soft landscaping;
- Working sites, site offices and laydown areas;
- Overhead / underground lines; and
- Gas pipelines.

2.3.9. In conclusion, all of the works described in Schedule 1 (authorised development) are either development for which development consent is required or associated development for which development consent may be granted (in accordance with sections 31 and 115 of the PA 2008, and taking account of the AD Guidance) and, accordingly, may lawfully form part of an application for an order granting development consent under the PA 2008.

2.3.10. A more detailed description of the various elements of the authorised development is provided in Chapter 4 of the Environmental Statement, Volume 1 (Document Ref. 6.2.4).

2.4. The undertaker

2.4.1. The "undertaker" is defined as NZT Power and NZNS Storage, who together have the benefit of the provisions of the Order, subject to the provisions of Article 7 (benefit of this Order) and Article 8 (consent to transfer benefit of this Order) (see paragraphs 3.3.5 to ~~3.3.13~~ 3.3.14 below).

2.4.2. NZT Power and NZNS Storage are joint applicants.

2.4.3. NZT Power will be responsible for the power generation and related elements of the Proposed Development comprising:

- Work No. 1 - an electricity generating station fuelled by natural gas and with a gross output capacity of up to 860MW comprising:
  - Work No. 1A - a CCGT plant;
  - Work No. 1B - CCGT and CCP cooling and utilities infrastructure;
  - Work No. 1C - CCP;
  - Work No. 1D - administration, control room and stores; and
  - Work No. 1E - ancillary works in connection with Work Nos. 1A to 1D.
- Work No. 2 - a gas connection, being works for the transport of natural gas to Work No. 1A, comprising:

- Work No. 2A - underground high pressure gas supply pipeline;
- Work No. 2B - above ground installations connecting Work No.2A to the National Grid Transmission System;

- Work No. 4 - water supply connection works to provide cooling and make-up water to Work No. 1.

2.4.4. NZNS Storage will be responsible for the carbon collection, compression and transport elements of the Proposed Development comprising:

- Work No. 6 - a carbon dioxide gathering network;
- Work No. 7 - a high pressure carbon dioxide compressor station;
- Work No. 8 - high pressure carbon dioxide export pipeline corridor.

2.4.5. Both NZT Power and NZNS Storage will also have powers under the Order in respect of the following works which are relevant to both:

- Work No. 3 - works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system, ~~comprising~~ comprising - Work No. 3A - an electrical connection from Work No. 1A to Work No. 3B, comprising 275 kilovolt underground and overground electrical cables and control systems cables, and the connection between Work No. 3B and the National Grid Tod Point substation; and
  - Work No. 3B - a new electrical substation at Tod Point, including electrical equipment, buildings, enclosures and extension works at the National Grid substation.
- Work No. 5 - wastewater disposal works in connection with Work No. 1, comprising:
  - Work No. 5A - repair and upgrade of the existing water discharge infrastructure to the Tees Bay; or
  - Work No. 5B - a new water discharge pipeline to the Tees Bay; and
  - Work No. 5C - up to two new wastewater pipelines between Bran Sands Wastewater Treatment Plant and Work No. 1.
- Work No. 9 - temporary construction and laydown areas, comprising:
  - Work No. 9A - Teesworks laydown;
  - Work No. 9B - Navigator Terminal and Seal Sands laydown;
  - Work No. 9C - INEOS laydown;
  - Work No. 9D - Saltholme laydown;
  - Work No. 9E - Saltholme laydown; and
  - Work No. 9F - Haverton Hill laydown;
- Work No. 10 - access and highway improvements, comprising works to create, improve, repair or maintain access roads, haul roads and access points.

- Further development (e.g. utility connections, fencing, earthworks etc.) in connection with each of Nos. 1 - 10, so far as they are allocated to each project entity.

2.4.6. Full details of the works are set out in Schedule 1 (authorised development) and are shown on the Works Plans (Document Ref~~:~~. 4.4).

2.4.7. Article 7 (Benefit of the Order) assigns the benefit of the Order to NZT Power and NZNS Storage in line with the above and as follows:

- 'Project A' - Work Nos. 1, 2, 3, 4, 5, 9 and 10 that benefit NZT Power; and
- 'Project B' - Work Nos. 3, 5, 6, 7, 8, 9 and 10 that benefit NZNS Storage.

2.4.8. The respective definitions of Project A and Project B in the Order are drafted negatively (i.e. listing the Work Nos. that are not within each project), to ensure that the categories of further development (that may be constructed in association with any Work No.) is incorporated into both projects.

2.4.9. The same split approach is adopted for the purposes of authorising the marine licensable activities, with separate deemed marine licences to be granted in favour of NZT Power for Project A (Schedule 10 of the Order) and NZNS Storage for Project B (Schedule 11 of the Order).

2.4.10. The Order is drafted so that each of the Applicants has the power to carry out all the necessary works for their respective parts of the Proposed Development following detailed design. As a consequence of the shared reliance on new infrastructure forming part of the Proposed Development, both Applicants benefit from powers under the Order to carry out certain development. Where there is certainty that only one of the Applicants will require the powers to carry out certain development, such powers under the Order solely benefit that applicant.

2.4.11. The approach of having more than one party as the undertaker has been taken in previous Orders, such as The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 and The Hornsea Two Offshore Wind Farm Order 2016.

2.4.12. Article 8(8) of the Order provides that the powers to carry out certain Work Nos. may be transferred by the Applicants without the consent of the Secretary of State:

- Work No. 3 (works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system) may be transferred to NGET;
- Work No. 5A (repair and upgrade of the existing water discharge infrastructure) may be transferred to Teesworks Limited or such other entity as STDC may ~~nominate~~confirm to the undertaker.

2.4.13. The Applicants are in discussions with NGET and Teesworks Limited regarding who will be responsible for carrying out these works. The provisions are included in the Order as it may be that NGET and Teesworks Limited are the most appropriate person to carry out the relevant works.

2.5. Compulsory acquisition

2.5.1. In addition to providing for the construction and operation of the authorised development the Order will, in accordance with section 122 and section 120(3) / Schedule 5 of the PA 2008, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.

2.5.2. The Book of Reference (Document Ref. 3.1) sets out a description of the land and interests included in the Order split by 'plots'. The plots are shown on the Land Plans (Document Ref. 4.2).

2.5.3. The Order provides for the areas which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (Document Ref. 3.2) which accompanies the DCO Application and sets out the justification for the acquisition or interference with the Order Land. Further information on the compulsory acquisition powers sought is provided below.

2.6. Open space

2.6.1. Section 132 of the PA 2008 applies to the compulsory acquisition of new rights over land forming part of a common, open space or fuel or field garden allotment. For the purposes of section 132, "open space" has the same meaning as in section 19 of the Acquisition of Land Act 1981:

"*means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground*."

2.6.2. The parts of the Order Land which are considered to be open space for the purposes of section 132 are shown hatched blue on the Land Plans (Document Ref. 4.2) (the 'Open Space Land'). This comprises parts of the foreshore and beach at Coatham Sands and parts of Coatham Sand Dunes.

2.6.3. Section 132(2) of the PA 2008 states that the Order, to the extent that it authorises the compulsory acquisition of a right over open space land by the creation of a new right over land, shall be subject to special parliamentary procedure unless:

- the Secretary of State is satisfied that one of the exceptions under sections 132(3) to (5) of the PA 2008 applies; and
- that fact, and the exception under the relevant subsection of sections 132(3) to (5), are recorded in the Order (or other document containing the Order).

2.6.4. The exceptions in sections 132(4) and (5) are not relevant to the Proposed Development. Section 132(3) provides that special parliamentary procedure is not required if the Order Land, when burdened with the rights under the Order, will be "no less advantageous than it was before" to the following persons:

- the persons in whom it is vested;
- other persons, if any, entitled to rights of common or other rights; and
- the public.

2.6.5. The Applicants are satisfied that the Open Space Land when burdened with the rights under the Order, will be "no less advantageous than it was before" to such persons. The draft preamble to the Order therefore sets out the Secretary of State's acknowledgment that section 132(3) applies (as it must pursuant to section 132(3)). The Applicants' justification as to why section 132(3) applies is set out in the Statement of Reasons (Document Ref. 3.2).

2.7. Statutory undertakers' land and apparatus

2.7.1. The interests held by each statutory undertaker identified by the Applicants as owning land or having a right to keep or access apparatus within the Order Land are identified in the Book of Reference (Document Ref. 3.1).

2.7.2. Section 127(2) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:

- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
- the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.

2.7.3. Section 127(5) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that:

- the right can be purchased without serious detriment to the carrying on of the undertaking; or
- any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of the other land belonging to or available for acquisition by them.

2.7.4. Section 138 of the PA 2008 states that an order granting development consent may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the order relates.

2.7.5. The Order includes protective provisions in respect of statutory undertakers (see Article 41 and Schedule 12). The Applicants are currently seeking to agree the form of protective provisions with the affected undertakers. Further details as to how the tests under sections 127 and 138 of the PA 2008 have been satisfied are set out in the Statement of Reasons (Document Ref. 3.2).

2.7.6. In addition, the Order includes protective provisions in relation to various other parties who are not statutory undertakers and to whom sections 127 and 138 of the PA 2008 do not apply. The Statement of Reasons (Document Ref. 3.2) also sets out who these parties are and the need for protective provisions for them.

3.0. THE PROVISIONS OF THE ORDER

3.1. Introduction

3.1.1. The Order includes a number of provisions to enable the construction, maintenance and operation of the Proposed Development. These are briefly described below and then considered in more detail in the following sections:

- Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order. Article 3 sets out the position on electronic communications for the purposes of the Order;

- Part 2: Article 4 provides development consent for the authorised development. Articles 5 and 6 respectively allow the authorised development to be maintained and operated. Articles 7 and 8 respectively set out who has the benefit of the powers of the Order and how (and to whom) those powers can be transferred. Article 9 provides for modifications and amendments to the York Potash Harbour Facilities Order 2016 and modifies local legislation which benefits PD Teesport Limited as the statutory harbour authority on the River Tees;

- Part 3: Articles 10 to 16 provide for the undertaker to be able to carry out works to and within streets, to create or improve accesses, to temporarily stop up streets and rights of way, and to regulate traffic;

- Part 4: Articles 17 to 21 set out supplemental powers relating to the discharge of water, felling or lopping of trees and removal of hedgerows, carrying out protective works to buildings, authority to survey and investigate land and the removal of human remains;

- Part 5: Articles 22 to 36 provide for powers of compulsory acquisition and to take temporary possession of land for the purposes of the authorised development, and also deal with various related land matters;

- Part 6: Articles 37 to ~~48~~ 49 include various miscellaneous and general provisions in relation to the ~~Order: - -~~ Order:-

  - Article 37 provides for Schedule 10 and Schedule 11 which include deemed marine licences that authorise licensable activities in the marine environment for the benefit of NZT Power and NZNS Storage respectively;

  - Articles 38 to 40 include provisions relating to: application of landlord and tenant law; operational land, and defence to proceedings in respect of statutory nuisance;

  - Article 41 provides protection for statutory undertakers and others through the protective provisions in Schedule 12;

  - Articles 42 to 48 include provisions for saving rights of Trinity House; protection of Crown rights; the procedure in relation to certain approvals as set out under Schedule 13; certification of plans as set out under Schedule 14; service of notices; arbitration procedure in the event of a dispute; and funding for compulsory acquisition compensation~~.~~;

  - Article 49 includes provision related to the interface with the proposed Hornsea Four Offshore Wind Farm.

- Schedules: there are fifteen Schedules to the Order, providing for:

  - the description of the authorised development (Schedule 1);

  - the Requirements (a form of control akin to planning conditions) applying to the authorised development (Schedule 2);

  - modifications and amendments to the York Potash Harbour Facilities Order 2016 (Schedule 3);

  - matters in relation to streets and access (Schedules 4 to 6);

- matters in relation to compulsory acquisition and taking temporary possession of land (Schedules 7 to 9);
- the deemed marine licence for Project A (Schedule 10);
- the deemed marine licence for Project B (Schedule 11);
- protective provisions (Schedule 12);
- the procedure in relation to certain approvals (Schedule 13);
- the certification of plans (Schedule 14); and
- the maximum design parameters of the authorised development (Schedule 15).

3.1.2. The Articles are considered below in numerical order (split between the 'Parts' of the Order). Schedules are briefly considered along with the Article which introduces them or to which they relate and are then covered in more detail where necessary after the Articles.

3.1.3. Alongside the justification for the inclusion of the provisions of the Order, examples of precedent made development consent orders are included for reference and to demonstrate the potential acceptability of such provisions.

3.2. **Part 1 (Preliminary)**

3.2.1. Articles 1 (Citation and Commencement) and 2 (Interpretation) are preliminary provisions.

3.2.2. Article 1 provides for the way in which the Order should be cited and when it takes effect.

3.2.3. Article 2 (Interpretation) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate some Schedules also contain provisions setting out what terms mean in the relevant Schedule. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development, including:

- Definitions of documents submitted as part of the DCO Application and which are referred to in the Order, such as the Environmental Statement (Document Ref. 6.1 - 6.4) and various framework plans and indicative strategies;
- A definition of "access land" which is given the same meaning as in section 1(1) (principal definitions for Part I) of the Countryside and Rights of Way Act 2000 (CROW). "Access land" is land over which the public has a right of open-air recreation under section 2(1)_of CROW. The Applicant requires powers to temporarily prevent access to this land (see paragraphs 3.4.7 to 3.4.15);
- The definition of '"apparatus"' has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include pipelines (and parts of them), electricity and fibre optic cables, pipe and cable protection equipment and telecommunications equipment, and to include aerial markers, cathodic protection test posts and field boundary markers, transformer rectification kiosks and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which the Applicants may need to carry out. A similar approach has precedent in The Eggborough Gas Fired Generating Station Order 2018;

- A definition of "maintain" has been added to make clear what is authorised under Article 5 (maintenance of authorised development), and in particular that it does not permit the undertaker to depart from the description of the authorised development in Schedule 1 or to carry out maintenance operations which would cause different environmental effects to those identified in the Environmental Statement (Document Ref. 6.1 - 6.4). It also specifies that whilst 'replacement' of the authorised development is allowed, this cannot encompass the whole of it - this is to ensure that the Order cannot be construed so as to in effect allow the complete replacement of the authorised development at some point in the future. This wording has precedent in Article 2 of The Immingham Open Cycle Gas Turbine Order 2020.

- Article 2 defines "commencement" and separately also defines the "permitted preliminary works". Where appropriate the Requirements (in Schedule 2, see paragraph 3.8.32 below) are drafted so that the permitted preliminary works can be carried out without discharging certain Requirements - an example is the detailed design approvals under Requirement 3. Where the permitted preliminary works need to be regulated by the relevant Requirement, they are not excluded from it (examples include Requirements relating to landscaping and biodiversity protection (4) and the construction environmental management plan (16)). The works identified in the "permitted preliminary works" are considered appropriate as to the nature of these works, and the ES has assessed the Proposed Development on the basis that the permitted preliminary works may be carried out prior to certain Requirements being discharged or triggered. A similar structure and wording has precedent in The Eggborough Gas Fired Generating Station Order 2018 and The Immingham Open Cycle Gas Turbine Order 2020. The "permitted preliminary works" are defined as follows:

  "*permitted preliminary works" means works consisting of environmental surveys, geotechnical surveys, surveys of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement*;

- The "undertaker" is defined as NZT Power and NZNS Storage, who together have the benefit of the provisions of the Order, subject to the provisions of Article 7 (benefit of this Order) and Article 8 (consent to transfer benefit of this Order).

- Article 2 includes definitions of "commissioning" and "date of final commissioning". "commissioning" is defined as the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is nearly complete) in order to ensure that they, and the authorised development as a whole, function in accordance with the plant design specifications and the undertaker's operational and safety requirements. The definition of "date of final commissioning" means the date on which commissioning of the authorised development is completed and it commences operation on a commercial basis or, where specified in the Order, the date on which a specified Work No. commences operation on a commercial basis. This definition has been drafted so that it can apply generally where used in some parts of the Order and to apply to specific Work Nos. where used elsewhere in the Order.

3.2.4. Sub-paragraphs (2) to (7) of Article 2 have been added to provide clarity in that (respectively) the definitions in sub-paragraph (1) do not apply to the deemed marine licences in Schedule 10 or Schedule 11 except where expressly provided; all distances,

directions and lengths (except where specified otherwise) are approximate; all areas described in square metres in the Book of Reference (Document Ref. 3.1) are approximate; references to numbered works are as described in Schedule 1 and shown on the Works Plans (Document Ref~~:~~ . 4.4); how the word 'includes' is to be construed; and that references to "plot" are to those shown on the Land Plans (Document Ref. 4.2) and described in the Book of Reference.

3.2.5. Article 3 (Electrical communications) has been added to confirm that references to documents in the Order include documents in electronic form and reference to communications being in writing include electronic communications. Sub-paragraph (2) sets out conditions that must be satisfied in order for an electronic communication to be treated as valid. Sub-paragraph (3) to (5) set out the arrangements for sending paper copies and the revocation of consent by recipients to the use of electronic communications.

3.3. **Part 2 (Principal Powers)**

3.3.1. Article 4 (Development consent etc. granted by this Order) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (Document Ref. 4.4) to delineate the area within which each 'work' can be constructed, maintained, and operated (see Article 4(3)). The areas within which each work can be constructed are therefore shown on the Works Plans. The Works Plans comprise of 11 key plans which identify the geographic extent of a further 31 detailed plan sheets which overlay the red line boundary of the Proposed Development. The 31 detailed plan sheets in turn show the locations within which each Work Number must be constructed. There is currently optionality around how Work No. 6 (CO_2 gathering network) will be constructed. The plan sheets show the boundaries within which each option must be constructed. Schedule 1 of the DCO is drafted so that only one of the two options for Work No. 6 may be constructed. The works set out in Schedule 1 are set out in full at paragraph 3.8.2.

3.3.2. Sub-paragraph (3) requires that the works authorised by the Order are situated in the numbered areas shown on the Works Plans (Document Ref~~:~~ . 4.4). This is to provide certainty as to what has been consented by the Order, in respect of which land areas. Article 4 and Schedules 1 and 2 operate together to provide the parameters within which the undertaker must construct, operate, and maintain the Electricity Generating Station. This is explained in greater detail in the section describing Schedule 1 (see paragraph 3.8.2).

3.3.3. Article 5 (Maintenance of authorised development) provides for the maintenance of the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order and the Requirements, and that it may only take place within the Order Limits.

3.3.4. Article 6 (Operation of authorised development) permits the operation and use of the authorised development, and is included in respect of the Electricity Generating Station comprised in the authorised development specifically under section 140 of the PA 2008 and in respect of the authorised development generally under section 120(3) of the PA 2008. Sub-paragraph 6(2) specifically preserves the need to obtain any other operational consent that may be needed for the Electricity Generating Station, in addition to the Order.

3.3.5. Article 7 (Benefit of this Order) overrides section 156(1) of the PA 2008 (which is permitted by section 156(2)) and provides that the benefit of the Order is solely for NZT Power in respect of 'Project A' and solely for NZNS Storage in respect of 'Project B'. For details of Project A and Project B, see paragraph 2.4.7 above.

3.3.6. Overriding section 156(1) of the PA 2008 is common in DCOs that have been made, including The Hinkley Point C (Nuclear Generating Station) Order 2013 and The Thorpe Marsh Gas Pipeline Order 2016. Given the nature of the authorised development and the powers sought in the Order, it is appropriate that the benefit of the Order is reserved to the specified undertaker (subject to the transfer provisions).

3.3.7. Article 8 (Consent to transfer benefit of this Order) makes provision for the transfer of the benefit of the Order. It also makes provision for the transfer of the deemed marine licences in Schedule 10 and Schedule 11 of the Order.

3.3.8. The consent of the Secretary of State is needed before the undertaker can transfer or lease the benefit of the Order, except where: (i) the transferee or lessee is (a) the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986; or (b) in relation to the transfer of a lease of any works within a highway, a highway authority responsible for the highways within the Order Land; or (ii) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the Applicants, or there are no outstanding actual or potential compulsory acquisition compensation claims, and there is therefore no need for regulatory oversight of any transfer. The carve outs from the need for consent have precedent in orders such as The Immingham Open Cycle Gas Turbine Order 2020 and The Hornsea Three Offshore Wind Farm Order 2020.

3.3.9. The same process applies for the transfer or grant of a deemed marine licence under Schedule 10 or Schedule 11 of the Order, except that the Secretary of State must consult the Marine Management Organisation ('MMO') before giving consent.

3.3.10. Sub-paragraph 8(5) specifies that where a transfer of grant is made under Article 8(1) or (2) references in the Order to the undertaker include any such transferee or lessee.

3.3.11. Sub-paragraph 8(8)(a)(iii) expressly permits the full or partial transfer or lease of Work No. 3 (works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system) to NGET without requiring the consent of the Secretary of State. Discussions with NGET are ongoing as to who will be responsible for carrying out the electrical connection works. NGET benefit from permitted development rights to carry out works to construct, operate, and maintain electricity infrastructure. As the owner and operator of the onshore electricity transmission network in England, NGET has the regulatory standing to carry out such works without requiring prior consent from the Secretary of State.

3.3.12. Sub-paragraph 8(8)(a)(iv) expressly permits the full or partial transfer or lease of Work No. 5A (repair and upgrade of the existing water discharge infrastructure) to Teesworks Limited (or such other party as STDC may ~~nominate~~confirm in writing to the undertaker) without requiring the consent of the Secretary of State. Teesworks Limited is understood to be the current owner of the existing water discharge infrastructure and may be the appropriate entity to carry out any upgrade works, rather than the Applicants.

3.3.13. Sub-paragraph 8(9) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Sub-paragraphs 8(10) to (12) provide further detail on the notification that is to be given.

3.3.14. Sub-paragraph 8(13) provides that where entering into an agreement under sub-paragraphs 8(1) or 8(2) which relates to transferring any of the benefit of a deemed marine licence to another person, the Environment Agency and the MMO must be notified in writing within 10 working days.

3.3.15. ~~3.3.14.~~Article 9 (Amendment and modification of statutory provisions) provides for Schedule 3 which sets out modifications and amendments to The York Potash Harbour Facilities Order 2016. The modifications are made pursuant to the power contained in section 120(5) of the PA 2008, which permit in certain circumstances the amendment of 'statutory provisions', defined in section 120(6) as including an instrument made under an Act. The York Potash Harbour Facilities Order 2016 is such a statutory instrument, and the amendments fall within the circumstances within which amendments are permitted. They are amendments of provisions which relate to matters for which provision may be made in the Order or which it is necessary or expedient to make in connection with this Order, being the means by which conflicts between the works and powers contained within the two development consent orders are to be avoided.

3.3.16. ~~3.3.15.~~There is precedent for modification of a development consent order by a subsequent development consent order in The Immingham Open Cycle Gas Turbine Order 2020 (which inserted protective provisions in The Able Marine Energy Park Development Consent Order 2014). There is also precedent in The Millbrook Gas Fired Generating Station Order 2019 (which inserted protective provisions in The Rookery South (Resource Recovery Facility) Order 2011).

3.3.17. ~~3.3.16.~~The relevant provisions are explained further below in the summary of Schedule 3 of the Order (see paragraph ~~3.8.78~~ 3.8.85 below).

3.3.18. ~~3.3.17.~~This Article also provides for the disapplication of certain requirements which would otherwise apply under local legislation. Section 120(5)(a) of the PA 2008 provides than an order granting development consent may apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the order.

3.3.19. ~~3.3.18.~~Sub-paragraph (2) of Article 9 seeks to disapply certain byelaws, directions and licensing provisions in force pursuant to the Tees and Hartlepools Port Authority Act 1966, Tees and Hartlepool Port Authority Revision Order 1974 and Tees and Hartlepool Harbour Revision Order 1994, to ensure that the Applicants have sufficient flexibility to build the scheme efficiently and are not restricted by byelaws, directions or licensing requirements that would impose restrictions on its construction operations and methodologies.

3.3.20. ~~3.3.19.~~The Applicants are seeking to clarify with the Tees Port Authority how the Proposed Development interacts with the operations of the port, with a view to confirming the extent of the Tees Port Authority's legislative controls, and the protective provisions needed to regulate any impact arising from the disapplication of those controls. The Applicants have included protective provisions in Part 13 of Schedule 12 to the Order.

3.4. **Part 3 (Streets)**

3.4.1. Article 10 (Power to alter layout etc. of streets) allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 4 and shown on the Access and Rights of Way Plans (Document Ref. 4.5).

3.4.2. Sub-paragraph (2) allows for the alteration of the layout of any street within the Order Limits for the purposes of construction, operation, or maintenance. A general power to alter the layout of streets is considered necessary in order to ensure that any unforeseen works may be carried out within the Order Limits and to ensure the construction of the Proposed Development can be completed. This latter power is subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. This is based on Article 8 of The Immingham Open Cycle Gas Turbine Order 2020.

3.4.3. Article 11 (Street works) is a model provision intended to permit in certain streets (as specified in Schedule 4) the carrying out of street works for the purposes of the authorised

development. Sub-paragraph (3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to sub-paragraph 11(1). This provides protection for the street authority for the street in question. This is based on Article 9 of The Immingham Open Cycle Gas Turbine Order 2020.

3.4.4. Article 12 (Construction and maintenance of new or altered means of access) provides that new or altered means of access are to be constructed to the reasonable satisfaction of the highway authority, unless otherwise agreed by the highways authority, and maintained at the expense of the undertaker for a year. This Article has precedent in Article 10 of The Eggborough Gas Fired Generating Station Order 2018 and Article 10 of The Immingham Open Cycle Gas Turbine Order 2020.

3.4.5. Any part of the new or altered means of access which are proposed to be public highway (as set out on the Access and Rights of Way Plans (Document Ref. 4.5)) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private accesses which the undertaker is altering or creating and as also set out in the Access and Rights of Way Plans) will then be maintained by the relevant street authority. Details of the new or altered means of access which are proposed and not proposed to be public highway are set out in Schedule 5.

3.4.6. Sub-paragraphs (3) and (4) of Article 12 mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. This defence needs to be expressly included in the Order since section 58 would not apply to works carried out pursuant to the Order.

3.4.7. Article 13 (Temporary stopping up of streets, public rights of way and access land) provides for the temporary stopping up of streets, public rights of way and access land for the purposes of carrying out the authorised development. The powers under this Article are required to safely carry out works to construct parts of the authorised development including the CO_2 gathering network, CO_2 export pipeline and related highway improvements. No permanent stopping up or diversion is required. Similar wording has been used in other made Orders, including Article 11 of The Immingham Open Cycle Gas Turbine Order 2020, Article 12 of The Drax Power (Generating Stations) Order 2019 and Article 11 of The Wrexham Gas Fired Generating Station Order 2017.

3.4.8. In respect of streets and public rights of way, the Article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets (set out in Schedule 6 of the Order and the Access and Rights of Way Plans (Document Ref. 4.5)). Route codes for footpaths and bridleways are shown where available on the Access and Rights of Way Plans. Specific points on the Access and Rights of Way Plans are marked by unique letter markers (cross-referenced in the Order) which provides certainty as to the parts of the streets or public rights of way which may be temporarily stopped up.

3.4.9. There are consultation requirements before temporary stopping up powers can be exercised and compensation is provided for in respect of the loss or suspension of any private rights of way. Sub-paragraph (6) confers a power on the undertaker, where the use of a street, public right of way or area of access land has been temporarily stopped up under the power in Article 13, to use such street, public right of way or area of access land as a temporary working site.

3.4.10. Sub-paragraph (9) of Article 13 provides for the suspension of section 2 of the Countryside and Rights of Way Act 2000 (rights of the public in relation to access land) in relation to the 'access land' set out in Schedule 6. "Access land" is defined under Article 2 by reference to the definition under section 1(1) of the Countryside and Rights of Way Act 2000 (CROW).

This comprises areas of land over which there is a public right of open-air recreation under section 2(1) of CROW.

3.4.11. Sub-paragraph (10) provides that the period of suspension lasts for the period of the temporary stopping up. Sub-paragraph (4)(c) specifies that the temporary stopping up of any access land is prohibited without first consulting Natural England.

3.4.12. The powers to suspend the rights of the public in relation to access land are required in order to ensure that the undertaker can safely carry out testing and start-up and pressurisation works on the CO_2 export pipeline beneath the land at the Coatham Sands beach and dunes within the area of Work No. 8 which comprises areas of access land over which there are public access rights.

3.4.13. Initial testing and start-up of the installed pipeline and its pressurisation with CO_2 may necessitate temporary restrictions on public access to the access land. However, the restrictions would be over a limited area of the access land and are projected to be for very short periods:

- Where only the section of CO_2 export pipeline under the access land is being tested, the testing and related restrictions on use of part of the access land would be expected to be limited to approximately four hours;

- Where the entire CO_2 export pipeline is undergoing a test (which the Applicants consider unlikely) access to part of the access land may be restricted for approximately 24 hours.

3.4.14. During detailed engineering the Applicants or its appointed EPC Contractor would be expected to undertake work to identify how restrictions on the use of the access land could be further limited or avoided. This type of testing and start-up works would also typically be done at night in order to have a negligible impact on users of the surface land. Requirement 5 requires a management plan to be approved and implemented, to regulate the undertakers' approach to any required restrictions to areas of the access land (see paragraph 3.8.42).

3.4.15. The access land is shown shaded beige on sheets 1 to 3 of the Access and Rights of Way Plans (Document Ref~~:~~ . 4.5). The Applicants are engaging with Natural England on the drafting in Article 13.

3.4.16. Article 14 (Access to works) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 4. Other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority in consultation with the highway authority.

3.4.17. Article 15 (Agreements with street authorities) is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street, and the alteration and diversion of the street. In addition to the model provisions, sub-paragraph (1) provides for such agreements to deal with the strengthening, improvement, or repair of any streets. Such a provision has been included in various DCOs including The National Grid (King's Lynn B Power Station Connection) Order 2013 and The Progress Power (Gas Fired Power Station) Order 2015.

3.4.18. Article 16 (Traffic regulation) allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads (defined under sub-paragraph (4) as a public highway maintained by and at the expense of the traffic authority) to the extent that it is necessary for the purposes of or in connection with the construction of the authorised development. It

gives effect to any prohibition, restriction or other provision made by the undertaker as if it was made by the traffic authority or local authority in whose area the road is situated.

3.4.19. Article 16 is not in the model provisions but there is a precedent for it in The Wrexham Gas Fired Generating Station Order 2017 (Article 14) - the reference in that DCO to "prior to when the authorised development first becomes operational" in Article 14(1) has been replaced with "prior to the date of final commissioning" so as to utilise the appropriate defined term in the case of the authorised development. Article 16 is considered necessary to ensure that the undertaker has the necessary powers to be able to carry out the authorised development, and that it can be constructed without unnecessary delay.

3.5. **Part 4 (Supplemental Powers)**

3.5.1. Article 17 (Discharge of water) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. Sub-paragraph (6) makes clear that this Article does not obviate the need for an environmental permit for water discharge activities or groundwater activities where this is required under environmental permitting requirements. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead. This Article has precedent in Article 15 of The Immingham Open Cycle Gas Turbine Order 2020.

3.5.2. Article 18 (Felling or lopping of trees and removal of hedgerows) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within The Order Land to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for loss or damage if caused. It is a model provision.

3.5.3. Advice Note 15 ('Drafting Development Consent Orders') specifies that if an applicant cannot specify which trees or hedgerows may need to be felled or lopped, the consent of the relevant planning authority is required before such works may be carried out. In order to address this, Requirement 4(1) of Schedule 2 of the Order specifies that no part of the authorised development may commence until a landscaping and biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority. Requirement 4(2)(b) of Schedule 2 to the Order specifies that the landscaping and biodiversity protection plan must include details of any tree or hedgerows to be removed.

3.5.4. Article 19 (Protective work to buildings) is a model provision which allows the undertaker to carry out protective works to buildings within the Order Limits, subject to a number of conditions including the service of 14 days' notice (except in the case of emergency) and the payment of compensation. The model provision has been updated to refer to the five-year period during which protective works may be carried out, and compensation payable, starting on the date ~~of final commissioning~~that those works are completed. The phrase in the model provisions (when it is 'open for use'), is not appropriate given the nature of the authorised development. There is precedent for this amendment in Article 33 of the Immingham Open Cycle Gas Turbine Order 2020.

3.5.5. Article 20 (Authority to survey and investigate the land) is based on the model provision which allows the undertaker to survey and investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation. The power extends to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts

of the authorised development. The Article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the Article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development. This Article has precedent in Article 16 of The Immingham Open Cycle Gas Turbine Order 2020.

3.6. **Part 5 (Powers of Acquisition)**

3.6.1. Article 22 (Compulsory acquisition of land) provides for the compulsory acquisition of such land as is required for the authorised development or which is required to facilitate the authorised development or is incidental to the authorised development. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 26 (Private rights). This approach has precedent in Article 18 of the Immingham Open Cycle Gas Turbine Order 2020. Article 22 is subject to Articles 25 (Compulsory acquisition of rights etc.), 31 (Temporary use of land for carrying out the authorised development) and 43 (Crown rights).

3.6.2. Article 23 (Power to override easements and other rights) provides that by virtue of section 158 of the PA 2008 in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the PA 2008, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision but is added to clarify the position regarding rights burdening land required for the authorised development. It has precedent in Article 19 of The Immingham Open Cycle Gas Turbine Order 2020.

3.6.3. Article 24 (Time limit for exercise of authority to acquire land compulsorily) is a model provision which imposes a time limit of five years for the exercise of powers of compulsory acquisition. The date of the making of the Order has been used to align with the date from which the undertaker may exercise any powers of compulsory acquisition that may be contained within the Order. The Applicants consider that five years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in Requirement 1 of Schedule 2 of the Order, and has precedent in the majority of Orders made to date, for example in Article 20 of The Immingham Open Cycle Gas Turbine Order 2020.

3.6.4. Article 25 (Compulsory acquisition of rights etc.) allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land for the benefit of the Applicants and for the potential benefit of statutory undertakers ~~whose~~ (and others with apparatus) where apparatus is required to be diverted or relocated (as identified in the table in Schedule 7 to the Order).

3.6.5. It provides for such rights as may be required to be acquired by the Applicants over land which it is authorised to acquire under Article 22 (Compulsory acquisition of land). In accordance with Advice Note 15, the Applicants have not sought a general power to impose restrictive covenants over the Order land, in Article 22(1). The benefit of Article 22 is that it would allow the Applicants, if appropriate, to reduce the area of outright (freehold) acquisition and rely on the creation and acquisition of rights instead, a lesser interference. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills, and has been followed in a number of development consent orders, for example The Immingham Open Cycle Gas Turbine Order 2020 and The A303 (Amesbury to Berwick Down) Development Consent Order 2020.

3.6.6. Sub-paragraphs (2), (3) and (5) provide for the exercise of the power by statutory undertakers (for the reasons noted above), ~~with the Applicants' prior written consent, to ensure that those persons are able to benefit from the rights acquired for their benefit.~~ where the Applicants have secured consent from the Secretary of State to transfer such powers to a statutory undertaker (or others with apparatus).

3.6.7. Related drafting in Article 8 (Consent to transfer benefit of Order) provides that the transfer to such persons of the power to acquire rights may be authorised in writing by the undertaker, without the need for the consent of the Secretary of State. This is necessary to facilitate the delivery of the authorised development. New rights may need to be acquired by the relevant statutory undertaker, to enable them to enjoy the benefit of those rights in association with the remainder of their statutory undertaking. Where rights are acquired under the Order for the benefit of such parties, liability for the payment of compensation to the owners of the land which will be burdened by the new rights remains with the Applicants.

3.6.8. ~~3.6.7.~~Sub-paragraph (4) provides that, for the land described in Schedule 7 and shaded blue on the Land Plans (Document Ref. 4.2), the Applicants' powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 7. It also provides that for the land described in Schedule 7 and shaded pink on the Land Plans, the Applicants can acquire new rights and impose restrictive covenants for the purposes set out in Schedule 7. This is an extension of the principle set out at paragraph 3.6.5 above, and allows the undertaker to acquire the necessary rights and impose restrictions in land which is shown coloured pink on the land plans, if following detailed design that is feasible.

3.6.9. ~~3.6.8.~~The power to acquire rights and in particular to impose restrictive covenants allows for the possibility of reducing the area of outright acquisition and therefore enables a more proportionate exercise of compulsory acquisition powers. It is in the public interest and has precedent in The Thorpe Marsh Gas Pipeline Order 2016 and The Abergelli Power Gas Fired Generating Station Order 2019. This is of particular importance to the authorised development as restrictive covenants for the protection of the underground elements of the Proposed Development would impose a lesser burden on the retained surface of the land than would be the case were it to be acquired outright.

3.6.10. ~~3.6.9.~~Sub-paragraph (6) provides that, where the Applicants need only to acquire rights over land, they are not obliged to acquire any greater interest in that land.

3.6.11. ~~3.6.10.~~Sub-paragraph (7) introduces Schedule 8, which amends existing compensation legislation in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. Schedule 8 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants.

3.6.12. ~~3.6.11.~~Sub-paragraph (9) explains the definition of rights over land and that it includes references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject.

3.6.13. ~~3.6.12.~~Sub-paragraph (10) confirms that nothing in this Article permits the undertaker to acquire or create rights or impose restrictive covenants in land specified in Schedule 9 (land of which temporary possession may be taken).

3.6.14. ~~3.6.13.~~This Article and Schedule 8 have been drafted to take account of the Housing and Planning Act 2016 and the precedent in recently made Orders such as The A303 (Amesbury to Berwick Down) Development Consent Order 2020.

3.6.15. ~~3.6.14.~~Sub-paragraph (11) provides that the Article is subject to Crown rights (Article 43), and sub-paragraph (12) provides that the Open Space Land (see paragraph 2.6 above) is discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the rights acquired for the authorised development. The latter is expressly permitted by Section 132(11)(b) of the PA 2008.

3.6.16. ~~3.6.15.~~Article 26 (Private rights) is based on a model provision and has the effect of extinguishing private rights and restrictions over land where: (1) land is compulsorily acquired; (2) where notified by the undertaker, the private right is inconsistent with a right being compulsorily acquired; and (3) land is owned or leased by the undertaker. The Article also suspends private rights where the private right is inconsistent with a right being compulsorily acquired by the undertaker and also suspends private rights for as long as the undertaker is in temporary possession of land under the Order. The Article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation of the authorised development. The Article follows the approach in Article 24 of The Wrexham Gas Fired Generating Station Order 2017. Sub-paragraph (4) limits the scope of the suspension of existing rights to only what is necessary where temporary possession of land is taken pursuant to the Order.

3.6.17. ~~3.6.16.~~Article 27 (Application of the ~~Compulsory Purchase (Vesting Declarations) Act~~ 1981 Act) is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 (the '1981 Act') to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This Article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in The Wrexham Gas Fired Generating Station Order 2017 and The Silvertown Tunnel Order 2018.

3.6.18. ~~3.6.17.~~Article 28 (Acquisition of subsoil and airspace only) permits the undertaker to acquire only the subsoil of, or airspace over, land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This Article is appropriate in the context of cables, pipes or other apparatus (which may be laid underground as part of the authorised development, or may oversail land), where acquisition of the 'entire' freehold may not be required, and it could permit the undertaker to compulsorily acquire only the 'smaller' interest, reducing the impact on the landowner. This is based on the model provision with amendments which have precedent in Article 28 of The Southampton to London Pipeline Development Consent Order 2020.

3.6.19. ~~3.6.18.~~Article 29 (Modification of Part 1 of the 1965 Act) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the PA 2008. This provision reflects changes introduced by the Housing and Planning Act 2016. Sub-paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the acquisition of subsoil or airspace only or the temporary possession or use of land under this Order. These modifications have precedent in Article 26 of The Southampton to London Pipeline Development Consent Order 2020.

3.6.20. ~~3.6.19.~~Article 30 (Rights under or over streets) is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in Article 25 of The Immingham Open Cycle Gas Turbine Order 2020 and Article 27 of The Progress Power (Gas Fired Power Station) Order 2015.

3.6.21. ~~3.6.20.~~Article 31 (Temporary use of land for carrying out the authorised development) allows the land specified in Schedule 9 to be temporarily used for the carrying out of the authorised development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used temporarily is the earlier of: where Schedule 9 specifies a purpose for which possession may be taken relating to particular Work Nos., the end of the period of one year beginning with the date of final commissioning of these Work Nos.; or the end of the period of one year beginning with the date of final commissioning of the authorised development. The Article also requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works.

3.6.22. ~~3.6.21.~~Wording has been added to paragraph 1(a)(ii) in order to allow Article 31 to apply to land which may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition.

3.6.23. ~~3.6.22.~~New wording has also been added to paragraphs (4) and (5) to take into account that the Applicants may, pursuant to Article 31(1)(a)(ii), temporarily use land that it may compulsorily acquire. This is also subject to a one-year limit beginning with the date of final commissioning of the authorised development.

3.6.24. ~~3.6.23.~~Sub-paragraph (9) makes clear that the undertaker cannot compulsorily acquire the land specified in Article 31(1)(a)(i) (which is land which of which temporary possession only is required). Wording has also been deleted in sub-paragraph (9) to dovetail with the new drafting in sub-paragraph (1). This Article has precedent in Article 26 of The Wrexham Gas Fired Generating Station Order 2017.

3.6.25. ~~3.6.24.~~Wording has been added at sub-paragraph (10) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in land specified in Schedule 7, and nor are the powers under Article 28 (Acquisition of subsoil or airspace only) or Article 30 (Rights under or over streets) precluded.

3.6.26. ~~3.6.25.~~Sub-paragraph (14) dis-applies the provisions of the Neighbourhood Planning Act 2017 that relate to temporary possession. The Applicants' rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and the regulations required to provide more detail on the operation of that regime are also not yet in place. The Applicants are of the view that it is not currently possible to understand or reflect accurately the temporary possession provisions as intended by Government in respect of DCOs. As such, it is considered appropriate to apply the temporary possession regime which has been included in numerous DCOs and orders made under the Transport and Works Act 1992 to date. This approach has been adopted in DCOs including The Silvertown Tunnel Order 2018, The Eggborough Gas Fired Generating Station Order 2018, and The Millbrook Gas Fired Generating Station Order 2019.

3.6.27. ~~3.6.26.~~Sub-paragraph (15) provides that the open space land (see paragraph 2.6 above) is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 31, and only for the period during which those powers are being exercised. This is similar in nature to the provision included within Article 25.

3.6.28. ~~3.6.27.~~Article 32 (Temporary use of land for maintaining the authorised development) provides for the temporary use of land for maintenance of the authorised development.

There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration of the land following the temporary possession. This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period of one year beginning with the date of final commissioning, as opposed to the date on which the project is opened for use, as the latter is not an appropriate phrase for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including in Article 28 of The Immingham Open Cycle Gas Turbine Order 2020. Sub-paragraph (13) dis-applies the provisions of the Neighbourhood Planning Act 2017 that relate to temporary possession for the same reasons as above in respect of Article 31. Sub-paragraph (14) provides that the Open Space Land (see paragraph 2.6 above) is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 32, and only for the period during which those powers are being exercised. This is similar in nature to the provisions included within Article 25 (Compulsory acquisition of rights etc.) and Article 31 (Temporary use of land for carrying out the authorised development).

3.6.29. ~~3.6.28.~~Article 33 (Statutory undertakers) provides for the acquisition of land belonging to statutory undertakers within the Order Land. The power is subject to the protective provisions in Schedule 12. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This power is required over the whole of the Order Land and has precedent in made Orders for gas fired generating stations, including in Article 28 of The Wrexham Gas Fired Generating Station Order 2017 and Article 29 of The Immingham Open Cycle Gas Turbine Order 2020.

3.6.30. ~~3.6.29.~~Article 34 (Apparatus and rights of statutory undertakers in streets) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are altered or diverted or where use is temporarily prohibited or restricted under Article 12 (Construction and alteration of new or altered means of access) or Article 13 (Temporary stopping up of streets, rights of way and access land). It is a model provision but has been amended in that sub-paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 12 of the Order. This has precedent in Article 31 of The Millbrook Gas Fired Generating Station Order 2019 and Article 30 of The Immingham Open Cycle Gas Turbine Order 2020.

3.6.31. ~~3.6.30.~~Article 35 (Recovery of costs of new connections) provides that persons who have to create a new connection following the exercise of powers under Article 33 (Statutory undertakers) may recover the costs of new connections from the undertaker. It is a model provision and has precedent in Article 31 of The Millbrook Gas Fired Generating Station Order 2019 and Article 31 of The Immingham Open Cycle Gas Turbine Order 2020.

3.6.32. ~~3.6.31.~~Article 36 (Compulsory acquisition of land - incorporation of the mineral code) prevents existing minerals under land being automatically acquired. It also addresses the situation where an owner wishes to work existing minerals and provides the undertaker with the ability to compensate the owner for any liability to do so as a result of the development.

3.7. Part 6 (Miscellaneous and General)

3.7.1. Article 37 (Deemed marine licence) constitutes deemed consent (as provided for under section 149A of the PA 2008) under section 65 of the Marine and Coastal Access Act 2009. Schedule 10 sets out the terms on which the licence would be granted in favour of NZT Power for Project A comprising licensable marine activities associated with Work Nos~~-~~. 5A and 5B. Schedule 11 sets out the terms on which the licence would be granted in favour of

NZNS Storage for Project B comprising licensable marine activities associated with Work Nos. 5A, 5B, 6 and 8. See paragraphs ~~3.8.85 to 3.8.87~~ 3.8.92 to 3.8.94 below.

3.7.2. Article 38 (Application of landlord and tenant law) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development, or the right to operate the same, or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.

3.7.3. Article 39 (Operational land for the purposes of the 1990 Act) is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made orders for generating stations, including The Progress Power (Gas Fired Power Station) Order 2015 and The Wrexham Gas Fired Generating Station Order 2017.

3.7.4. Article 40 (Defence to proceedings in respect of statutory nuisance) is a model provision that provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990, if the statutory nuisance is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974, or which cannot be reasonably avoided as a consequence of the authorised development. This Article has precedent in Article 36 of The Immingham Open Cycle Gas Turbine Order 2020. The Applicants consider that the Requirements provide sufficient protection against the matters that may constitute "statutory nuisances" under section 79(1) of the Environmental Protection Act 1990.

3.7.5. Article 41 (Protective provisions) provides for Schedule 12, which protects the interests of certain statutory undertakers and other third parties potentially affected by the authorised development.

3.7.6. Article 42 (Savings for Trinity House) protects the interests of Trinity House. It specifies that no powers in the Order will have the effect of prejudicing any of the rights, duties or privileges of Trinity House. The Article is required given works are authorised by the Order in the marine environment in England where Trinity House has jurisdiction as the general lighthouse and navigational safety authority.

3.7.7. Article 43 (Crown rights) includes provisions safeguarding the rights of the Crown in relation to the Crown Estate land within the Order land (under the River Tees and within Tees Bay). This Article has precedent in Article 41 of The Hornsea Three Offshore Wind Farm Order 2020. Article 22 (Compulsory acquisition of land) and Article 25 (Compulsory acquisition of rights etc.) include express provision confirming that the powers contained therein are subject to Article 43.

3.7.8. Article 44 (Procedure in relation to certain approvals) provides a procedure in relation to consents and approvals required pursuant to the Order (other than Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within six weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold or delay consent where an application has been submitted by the undertaker pursuant to this Article. The consenting authority is defined under Article 2 (Interpretation) as the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions.

3.7.9. For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 13 (see paragraph ~~3.8.89~~3.8.96) below).

3.7.10. This Article has precedent in Article 38 of The Immingham Open Cycle Gas Turbine Order 2020 and is considered appropriate and justified in order to ensure that the authorised development can proceed in a reasonable timescale, and so that there is a consistent approach to consents that must be sought by the undertaker pursuant to the Order. The Applicants have submitted the draft wording to Redcar and Cleveland Borough Council and Stockton on Tees Borough Council and will continue to engage with the planning authorities on it.

3.7.11. Article 45 (Certification of plans etc.) is a model provision which provides for the submission of the book of reference, environmental statement, plans and other documents referred to in the Order to the Secretary of State in order that they may be certified as being true copies.

3.7.12. Article 46 (Service of notices) deals with the service of notices pursuant to the Order. These provisions have precedent in Article 40 of The Immingham Open Cycle Gas Turbine Order 2020.

3.7.13. Article 47 (Arbitration) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision. Article 47 specifies that arbitration will not apply to decisions of the Secretary of State or MMO under the Order. Article 47 is also subject to Article 42 (Saving for Trinity House).

3.7.14. Article 48 (Funding) provides for a guarantee or other form of security for the payment of compensation to be put in place prior to exercising the compulsory acquisition powers granted by the Order. The Article is based on Article 43 of The Immingham Open Cycle Gas Turbine Order 2020.

3.7.15. Article 49 (Modification to Interface Agreement) replicates drafting from protective provisions proposed by BP Exploration Operating Company Limited ("bp") in its representations to the Hornsea Project Four DCO (currently in examination) (Application Reference: EN010098).

3.7.16. Its effect is conditional on the Hornsea Project Four DCO having either been refused, or having expired without its authorised development having been lawfully commenced.

3.7.17. It provides for a modification to be made to the Interface Agreement to remove the Carbon Entity's liability to the Wind Entity under the terms of that agreement due to or arising from the Carbon Entity's Activities in the Exclusion Area, and for the provision of a compensation payment to be made by the Carbon Entity to the Wind Entity in lieu of the same. Two alternative forms of drafting have been proposed to provide for the compensation payment, depending on whether or not an equivalent provision has been included in the Hornsea Project Four DCO at that point in time.

3.7.18. With the exception of the removal of liability from under the Interface Agreement, the Article will cease to have effect in circumstances where prior to the Longstop Date, the Carbon Entity notifies the Wind Entity that it may carry out Activities within the Exclusion Area, or where the Carbon Entity has already paid such compensation to the Wind Entity in accordance with the provisions under the Hornsea Project Four DCO.

3.8. Schedules

Schedule 1 (Authorised Development)

3.8.1. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different elements of the authorised development. This split between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (Document Ref~~:~~ , 4.4) to delineate the area within which each 'work' can be constructed, maintained, and operated (see Articles 4 to 6). The areas within which each work can be constructed are therefore shown on the Works Plans. The Work Nos. also allow the different elements of the authorised development to benefit either NZT Power or NZNS Storage (or both entities).

3.8.2. The works set out in Schedule 1 to the Order and which must be constructed within the corresponding areas shown on the Works Plans are:

- Work No. 1 - an electricity generating station fuelled by natural gas and with a gross output capacity of up to 860MW comprising;
- Work No. 1A - a CCGT plant;
- Work No. 1B - CCGT and carbon capture plant ('CCP') cooling and utilities infrastructure;
- Work No. 1C - CCP;
- Work No. 1D - administration, control room and stores; and
- Work No. 1E - ancillary works in connection with Work Nos. 1A, 1B, 1C and 1D.
- Work No. 2 - a gas connection, being works for the transport of natural gas to Work No. 1A, comprising:
  - Work No. 2A - underground high pressure gas supply pipeline;
  - Work No. 2B - above ground installations connecting Work No.2A to the National Transmission System;
- Work No. 3 - works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system, comprising:
  - Work No. 3A - an electrical connection from Work No. 1A to Work No. 3B, comprising 275 kilovolt underground and overground electrical cables and control systems cables, and the connection between Work No. 3B and the National Grid Tod Point substation; and
  - Work No. 3B - a new electrical substation at Tod Point, including electrical equipment, buildings, enclosures and extension works at the National Grid substation.
- Work No. 4 - water supply connection works to provide cooling and make-up water to Work No. 1;
- Work No. 5 - wastewater disposal works in connection with Work No. 1, comprising:
  - Work No. 5A - repair and upgrade of the existing water discharge infrastructure to the Tees Bay; or

  - Work No. 5B - a new water discharge pipeline to the Tees Bay; and
  - Work No. 5C - up to two new wastewater pipelines between Bran Sands Wastewater Treatment Plant and Work No. 1.
- Work No. 6 - a carbon dioxide gathering network;
- Work No. 7 - a high pressure carbon dioxide compressor station;
- Work No. 8 - high pressure carbon dioxide export pipeline corridor;
- Work No. 9: temporary construction and laydown areas, comprising:
  - Work No. 9A - Teesworks laydown;
  - Work No. 9B - Navigator Terminal and Seal Sands laydown;
  - Work No. 9C - INEOS laydown;
  - Work No. 9D - Saltholme laydown;
  - Work No. 9E - Saltholme laydown; and
  - Work No. 9F - Haverton Hill laydown.
- Work No. 10: access and highway improvements, comprising works to create, improve, repair or maintain access roads, haul roads and access points.

3.8.3. Schedule 1 of the Order also includes details of further development that may be carried out in connection with Work Nos. 1 to 10. The further development listed is not exhaustive and other works falling within the scope of associated development may be carried out provided they are within the scope of the environmental impact assessment.

3.8.4. Work No. 1 imposes a gross output (megawatt or MW) capacity cap on the generating station of up to 860 MW, tying the authorised development to the scope of the EIA carried out and reported in the Environmental Statement (Document Ref. 6.1 to 6.4).

3.8.5. The Works listed in Schedule 1 have also been drafted so as to be non-specific about the technology, configuration and layout of plant and apparatus (provided that the relevant Work No. is located within the corresponding shaded Work No. area shown on the Works Plans). There are a number of regulatory, commercial and technological factors which will influence the decision as to which options are selected, and the undertaker's ability to procure and deliver both a commercially flexible and highly efficient solution, taking account of the UK's energy needs, would be constrained if a final decision was taken now.

3.8.6. As set out in Chapter 4 of the Environmental Statement (Document Ref. 6.2.4) optionality has been retained in respect of Work No. 3 (works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system), Work No. 5 (wastewater disposal works in connection with Work No. 1) and Work No. 6 (CO_2 gathering network).

3.8.7. The geographic limits within which the different options for Work Nos. 3, 5 and 6 would be located are shown on the Works Plans (Document Ref. 4.4) and Development Areas Plan (ES Figure 3-2 - Document Ref. 6.3.3). Further details of the scheme optionality is set out below. All references to Works Plans sheet numbers are to the sheet numbers for the detailed plans (not the Key Plan sheet numbers).

Gas Connection

3.8.8. Natural gas will be used as the fuel for the operation of the Low-Carbon Electricity Generating Station. Subject to agreement with National Gas Grid (NGG), natural gas will be supplied via a tie-in to the gas transmission network in the area (Work No. 2) on the north bank of the Tees at Seal Sands with subsequent transport through the existing Sembcorp Gas Pipeline under the River Tees to Bran Sands and then via a new 24" diameter buried gas pipeline from Bran Sands to the PCC Site.

3.8.9. The route for the connection to the high-pressure gas transmission system is shown in Figure 3-2B in ES Volume II (Document Ref. 6.3).

3.8.10. Two new co-located AGIs will be constructed next to the existing NGG facility at Seal Sands. The first (NGG) AGI will receive the natural gas from the newly created tie-in to the existing NGG pipeline; in turn this will cross feed to the second new (NZT) AGI and then on into the existing buried Sembcorp Gas Pipeline described above. The new NZT AGI will include metering, isolating valves.

3.8.11. The outlet from the new NZT AGI will be routed into the existing, 24" Sembcorp Gas Pipeline located approximately 100m north of the new AGI. The existing Sembcorp Gas Pipeline runs through the existing Seal Sands utility corridor and crosses the river Tees from a location nearby Navigator Terminals and lands on the north bank of Dabholm Gut. It then runs down the Dabholm Gut, past the NWL Bran Sands WwTP and on to Wilton site south of the Tees.

3.8.12. A new tie-in to the existing Sembcorp Gas Pipeline will be constructed near to the NWL Bran Sands WwTP, which will then connect via another new AGI into a new gas pipeline which will run to the east of the NWL Bran Sands WwTP up to the PCC Site. The new section of gas pipeline will be installed below ground using a combination of open-cut and trenchless technologies, depending on the constraints or crossings required.

3.8.13. The area within which the new gas pipeline must constructed is shown hatched green on sheet numbers 6 and 7. The area within which the AGIs must be constructed is shown shaded dark green on sheet numbers 6 and 7 of the Works Plans.

Electrical Connection

3.8.14. The existing electrical infrastructure in the Teesside area comprises 275 kilovolt (kV) and 400 kV overhead lines as well as lower voltage above and below underground cables that serve the existing National Grid Electricity Transmission (NGET) substation at Tod Point.

3.8.15. The proposed electrical connection (Work No. 3A) for the import/export of electricity will be between the substation forming part of the Electricity Generating Station (Work No. 1) and NGET's Tod Point substation 1.3 km to the south (see Figures 3-2C and 5-3 in ES Volume II, Document Ref. 6.3) and the Electrical Connection Plans (Document Ref. 4.8).

3.8.16. The proposed electrical connection (Work No. 3A) will comprise a 275 kV single circuit cable route and control system cables connecting the substation on the PCC Site into a new NZT owned electrical substation (part of Work No. 3B) adjacent to the existing NGET 275kV Tod Point substation (within Work No. 3A). The electrical connection works will also involve NGET extending its Tod Point substation by adding new bays to the existing Tod Point substation compound. This extension to the NGET substation is included in Work No. 3B. The area within which Work No. 3A and Work No. 3B may be constructed is shown hatched orange on sheet number 8 of the Works Plans.

3.8.17. Two possible routeings for the electrical connection (Option 1A and Option 1B) are shown on Figure 5-3 (ES Volume II, Document Ref. 6.3) and the electrical connection plans

(Document Ref. 4.8). These two options only relate to the routeing of the cables across part of the Teesworks site and crossing the rail line and are due to uncertainty in the timing and exact location of third-party infrastructure being developed in this part of the Site by the site operator and the York Potash project. This infrastructure will be used to facilitate the crossing of the Tees Valley railway line by the electrical connection for the Proposed Development.

3.8.18. The remainder of the corridor for the electrical connection is broad in parts due to the site being the subject of development proposals by Teesworks which are still being worked up and designed in detail, and the electrical connection routeing needs to be flexible to fit with the development that actually comes forward.

3.8.19. All electrical and control system cables will be installed below ground or at ground level (with a crossing over the railway line). No new overhead transmission lines are proposed as part of the works.

3.8.20. The area required for the new electrical substation and the extension to the adjacent NGET Tod Point substation are within Work No.3A (as well as Work No. 3B) as illustrated on the Works Plans (Document Ref. 4.4). This is in order to facilitate the construction of the connection between them.

3.8.21. Within Work No. 3B the exact location of the proposed new electrical substation is not currently known as this will be dependent on which of the connection options (1A or 1B) is selected, detailed design and any development proposals which come forward in the area. Therefore, the area covered by Work No. 3B is larger than required for the new electrical substation but subject to the maximum design parameters as secured by Requirement 3(11) and Schedule 15.

Water Discharge Connection

3.8.22. The Applicants may be able to utilise existing discharge infrastructure (into Tees Bay) (Work No. 5A). The routeing of Work No. 5A is shown hatched blue on sheet numbers 10 and 11 of the Works Plans. Work No. 5A has advantages from a sustainability perspective and limiting environmental effects. However further survey work is required to determine the condition of the existing infrastructure and whether it is suitable for re-use, as well as a commercial agreement with STDC.

3.8.23. The alternative - and to ensure that the Proposed Development includes deliverable and certain water discharge infrastructure - would be to construct a replacement discharge pipeline into Tees Bay (Work No. 5B) which would be in a different location to the existing pipeline. The routeing of Work No. 5B is shown dotted blue on sheet numbers 10 and 11 of the Works Plans. To narrow the scope of the construction works and minimise related environmental effects, Work No. 5B is located in the same corridor as the CO_2 export pipeline (Work No. 8).

CO_2 Gathering Network

3.8.24. The CO_2 gathering network will predominantly use an existing above ground pipe racking network and using existing culverts and overbridges. The ~~CO?~~ CO_2 gathering network is proposed to start in Billingham, pass through the Seal Sands industrial area and cross under the River Tees before entering the PCC Site for high pressure (HP) compression.

3.8.25. There are two options proposed for the routeing of the ~~CO?~~ CO_2 gathering network across the River Tees (both of which comprise part of Work No. 6). The routeing of the CO_2 Gathering Network across the River Tees will be either by:

- ~~A~~ a connection installed using a horizontal directional drilled (HDD) bore from a location near to Navigator Terminals to the northern bank of the mouth of Dabholm Gut. This is known as "Option 2 (HDD)". The area within which Option 2 must be constructed is shown hatched purple on sheet numbers 13 to 16 of the Works Plans.

- construction of the pipeline within the existing Sembcorp No. 2 Tunnel from Navigator Terminals to the northern bank of the mouth of Dabholm Gut. This is known as "Option 3 ("Sembcorp Tunnel")". The area within which Option 3 must be constructed is shown hatched purple on sheet numbers 17 to 20 of the Works Plans.

3.8.26. Work No. 6 is drafted in the DCO so that only one of Option 2 or Option 3 may be constructed following approval of detailed design under Requirement 3 in Schedule 2.

3.8.27. Whichever option is selected, the pipeline will then run above ground along the northern bank of Dabholm Gut past Bran Sands Wastewater Treatment Plant and then north to the PCC Site (see Figure 5-2, ES Volume II, Document Ref. 6.3).

3.8.28. A third option (known as "Option 1") for a long bored tunnel across the River Tees was originally considered by the Applicants. However, this has not been taken forward. To avoid confusion, the Applicants have retired the references to Option 1 and the DCO and Works Plans simply refer to Options 2 and 3 that are being taken forward.

Tying the EIA into the Order

3.8.29. The mechanics of the drafting in Schedules 1, 2 and 15 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement (Document Ref. 6.1 to 6.4). This is achieved through the following mechanisms in the Order:

- Article 4 and Schedule 1 provide the power to carry out the authorised development. Pursuant to Article 4(3) each numbered work must therefore be situated within the area delineated on the Works Plans (Document Ref. 4.4) - thus the project infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element can be built, and that has been factored into the Environmental Statement assessments;

- In terms of detailed design, Requirement 3 in Schedule 2 of the Order provides that the undertaker must obtain the approval of the relevant planning authority to the siting, layout, scale and external appearance of all new buildings and structures, prior to commencing these works;

- Requirement 3(11) in Schedule 2 of the Order provides that Work No. 1, 3 and Work No. 7 (those with substantial buildings) must be carried out in accordance with the maximum design parameters set out in Schedule 15;

- The maximum parameters in Schedule 15 of the Order are the same as those used for the assessment of effects in the Environmental Statement. These parameters are based on application of the Rochdale Envelope principle, such that maximum building dimensions have been presented and assessed in the Environmental Statement, recognising that the final building massings may differ from (but will never be larger than) these maxima, depending on the technology provider selected;

- Requirement 3(1)(c) in Schedule 2 of the Order specifies that the height of the stack comprised in Work No. 1 must be at a level at which the environmental effects will be no worse than those identified in chapter 8 of the Environmental Statement (Document Ref~~.~~ 6.2.8). This allows for detailed design (of the stack and surrounding buildings) to be optimised and not unduly constrained, with a potentially lower stack height (potentially reducing its landscape and visual impact), subject to the air quality

effects not then being greater than those assessed in the Environmental Statement. It is noted that air impacts will also be separately considered and controlled by the Environment Agency through the environmental permitting process;

- The assessment of maximum parameters in the Environmental Statement (Document Ref~~.~~ 6.1 - 6.4) also ensure that the air impact assessment and visual impact assessment of the tallest structures associated with the Proposed Development are defined and robustly assessed within the environmental statement.

3.8.30. The combined effect of and relationship between these provisions means that whichever options are selected, the authorised development will not give rise to environmental effects beyond those which have been assessed.

Schedule 2 (Requirements)

3.8.31. Schedule 2 sets out the Requirements which apply to the carrying out and operation of the authorised development. The Order land falls within the administrative boundaries of both Redcar and Cleveland Borough Council and Stockton-on-Tees Borough Council. For those Work Nos. falling within both areas (2 and 6 and related development under Work No. 9 and 10), Requirements would need to be discharged by each authority, for the relevant part within their respective areas. For ease the term 'relevant planning authority' is used below. The Requirements are subject to ongoing consultation with both local planning authorities, in addition to consultation with other statutory consultees.

3.8.32. The Requirements closely relate to the mitigation set out in the Environmental Statement (Document Ref. 6.1 - 6.4). Various Requirements allow their discharge in relation to "a part" of the authorised development - this permits, for instance, the submission and approval of a management plan for the connection corridors first, if the construction programme means that those are ahead of another part of the authorised development. The Order deliberately does not define "a part", since it is not known at this stage exactly how each Requirement will be discharged. If the relevant planning authority considers, on receipt of an application to discharge a Requirement, that it requires more information then it has power to require that pursuant to the process set out in Schedule 13 of the Order (see paragraph ~~3.8.89~~ 3.8.96 below). Additional information could include that relating to another part of the authorised development, if required to consider the details submitted for approval.

3.8.33. Requirement 1 (Commencement of the authorised development) - this Requirement is based upon the model provisions and requires that the authorised development can only be commenced within five years of the date of the Order coming into force. The undertaker is required to give the relevant planning authority at least 14 days' notice of its intention to commence the authorised development.

3.8.34. Requirement 2 (Notice of commencement and completion of commissioning) - this is not a model provision. It requires the undertaker to give notice to the relevant planning authority of the intended start of commissioning, and the date of final commissioning. These are points in the development programme at which certain Articles and Requirements are triggered or can no longer be relied on, and it is therefore appropriate for the relevant planning authority to be notified of when they occur. Notice of the intended start of commissioning and date of final commissioning has been used instead of giving the relevant planning authority notice of "commencement of commercial use". The latter term is common in some other generating station DCOs but is not required as a trigger in this case and is not therefore used in the DCO Articles and Requirements. The terms 'commissioning' and 'date of final commissioning' are defined at paragraph 3.2.3 above.

3.8.35. Requirement 3 (Detailed design) - this is based on a model provision. It requires the specific design details for all Work Nos. except 10 to be submitted to and approved by the relevant planning authority~~—~~, following consultation with STDC and Sembcorp, before

commencement (save for the permitted preliminary works). The permitted preliminary works are defined under Article 2 of the Order. To the extent required - at highway access points - Work No. 10 is controlled by Requirement 7 (paragraph 3.8.44 below).

3.8.36. Where there is optionality in respect of Work ~~No.~~No. 3 (works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system), Work No. 5 (wastewater disposal works in connection with Work No. 1) and Work No. 6 (CO_2 gathering network), Requirement 3 provides an effective mechanism for ensuring the relevant planning authority will have the relevant details of the selected development option for approval, before substantive works are carried out. In respect of Work Nos. 1, 3 and 7, the submitted details must comply with the maximum parameters set out in Schedule 15 - those match the parameters used in the Environmental Statement (Document Ref ~~No~~. 6.1 - 6.4) to assess the Proposed Development.

3.8.37. The authorised development must be constructed in accordance with the approved details.

3.8.38. Requirement 4 (Landscaping and biodiversity protection management and enhancement) - this is based on a landscaping model provision, however has been modified to make additional provision for biodiversity protection management and enhancement. It has been split into two plans, one relating to the construction period and the second relating to the operational period.

3.8.39. Sub-paragraph (1) requires the undertaker to submit a landscaping and biodiversity protection plan to the relevant planning authority~~.~~, following consultation with STDC and Sembcorp, prior to commencing the authorised development of that part the plan relates to. The plan must set out measures to protect existing tree and shrub planting and avoid impacts on biodiversity and habitats and must be implemented as approved during the construction period.

3.8.40. Sub-paragraph (4) requires the undertaker to submit a landscaping and biodiversity management and enhancement plan, prior to the commissioning of Work No. 1 or 7 (the only areas where ongoing management or enhancement are proposed), to be in accordance with the principles of the indicative landscaping and biodiversity strategy (Document Ref~~:~~ . 5.12). This plan must include specific details as specified in sub-paragraph (5) and must be implemented as approved during operation of the authorised development.

3.8.41. This approach of splitting out the Requirement into two plans provides appropriate protection for the landscaping and biodiversity elements during construction, whilst providing the undertaker with the ability to commence construction without having to have provided full details of all the final landscaping and biodiversity proposals. It has precedent in The Immingham Open Cycle Gas Turbine Order 2020.

3.8.42. Requirement 5 (Public rights of way and access land management) requires the undertaker to submit a management plan for any sections of public rights of way and coastal access land that are to be temporarily closed. The management plan must be approved by the relevant planning authority prior to closing or diverting the relevant public right of way or access land. The plan must include the details specified in ~~sub-paragraph~~ sub-paragraph (2) and must be implemented as approved.

3.8.43. Requirement 6 (External lighting) - this is based upon a model provision and requires the undertaker to submit details of all external lighting to be installed during construction to the relevant planning authority for approval before the authorised development may commence, save for the permitted preliminary works. ~~Sub-~~Sub-paragraph (2) contains an equivalent provision for the operation of the authorised development which requires the scheme to be submitted prior to commissioning.

The schemes submitted must be in accordance with the indicative lighting strategy (Document Ref~~:~~ , 5.11)

3.8.44. Requirement 7 (Highway accesses) - this is a modified model provision. It provides that no part of the authorised development, save for the permitted preliminary works, may commence until details of any new, modified or temporary means of access to the public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic for that part have been submitted to and approved by the relevant planning authority. Consultation is required with the highway authority~~,~~ , STDC and Sembcorp and the highway accesses must be constructed in accordance with the approved details. Accesses required only temporarily must be reinstated.

3.8.45. Requirement 8 (Means of enclosure) - this is based on a model provision. It requires that no part of the authorised development may commence, save for the permitted preliminary works until details of all temporary means of enclosure have for that part been submitted to and approved by the relevant planning authority, following consultation with STDC and Sembcorp, including a programme for the removal of such temporary means of enclosure. It also requires that prior to the date of final commissioning, any permanent means of enclosure must have been approved and completed.

3.8.46. Requirement 9 (Site security) - this is not a model provision. It requires that no part of Work No. 1 or 7 may be brought in to use until a scheme detailing security measures to minimise crime has been approved by the relevant planning authority. The approved scheme must be implemented throughout the operation of the relevant part of the authorised development.

3.8.47. Requirement 10 (Fire prevention) - this is not a model provision. It provides that no part of Work No. 1 or 7, save for the permitted preliminary works, may commence until a fire prevention method statement has been submitted to~~,~~ , after consultation with the Health and Safety Executive and the Cleveland Fire Authority, and approved by the relevant planning authority. The authorised development must be implemented in accordance with the approved details.

3.8.48. Requirement 11 (Surface and foul water drainage) - this is based on a model provision. It provides that no part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems for that part, in accordance with the construction environmental management plan and a management and maintenance plan, have been submitted to and approved by the relevant planning authority (in consultation with Environment Agency, the lead local flood authority ~~and~~ , the relevant drainage authority, STDC and Sembcorp). The systems must be constructed in accordance with the approved details.

3.8.49. The undertaker must then also obtain the approval of the relevant planning authorities (following consultation with the same bodies) of the equivalent permanent systems, which must occur prior to the start of construction of any part of those systems. The details submitted must be in accordance with the principles set out in Chapter 9 of the Environmental Statement (Document Ref. 6.2.9). The undertaker can submit separate plans for the surface and foul water drainage, as the programmes for designing each may be different.

3.8.50. Requirement 12 (Flood risk mitigation) - this is not a model provision. It provides that no part of the authorised development, save for the permitted preliminary works, may commence until a scheme for the mitigation of flood risk during construction has, for that part, been submitted to and approved by the relevant planning authority after consultation with the Environment Agency and STDC.

3.8.51. The scheme must be in accordance with the principles set out in Chapter 9 of the Environmental Statement (Document Ref. 6.2.9) and Appendix 9a of the Environmental Statement (Document Ref. 6.4.8) and the Requirement makes clear that the planning authority should consult with the Environment Agency and STDC prior to approving the schemes. A further scheme in relation to the operational stage must subsequently be submitted. The schemes must be approved, respectively (i) prior to the commencement of the authorised development; and (ii) prior to commissioning of the authorised development and must be implemented throughout the construction and operation periods as applicable. The Requirement also secures the approval and implementation of a flood emergency response and contingency plan.

3.8.52. Requirement 13 (Contaminated land and groundwater) - this is a modified model provision. It provides that no part of the authorised development may commence save for investigations to assess ground conditions until a scheme ~~(to include a risk assessment and, if necessary, a site investigation)~~ to deal with the contamination of land has, for that part, been submitted to and approved by the relevant planning authority following consultation with the Environment Agency and STDC. It requires that the submitted scheme must be in accordance with the principles set out in chapter 10 of the Environmental Statement (Document Ref. 6.2.10) and ~~the Environmental Statement commitments register (Document Ref: 6.4.47) and must be included in the~~ any construction environmental management plan submitted pursuant to Requirement 16. This must include a preliminary risk assessment; an appraisal of remediation options; and a proposal of the preferred option. Where the risk assessment indicates that remediation is required, the scheme must include a remediation strategy; a materials management plan; details of how any unexpected contamination will be dealt with; and details of any ongoing monitoring requirements.

3.8.53. If the remediation strategy is implemented, then a verification report demonstrating completion of the remediation works must be produced and supplied to the relevant planning authority and the Environment Agency. A statement as to how any outstanding remediation works will be completed must be supplied to the relevant planning authority and the Environment Agency, at the same time as the verification report, where this does not demonstrate completion of the remediation measures. Any outstanding remediation and monitoring measures must be completed to the reasonable satisfaction of the relevant planning authority by the date agreed, after consultation with the Environment Agency and STDC.

3.8.54. As an alternative to the above, the undertaker may submit for approval by the relevant planning authority, following consultation with the Environment Agency and STDC, a notification that the undertaker instead intends to rely on any scheme to deal with the contamination of land (including groundwater) for any part of Work Nos. 1, 7, 9A or 10 that has been previously approved by the relevant planning authority pursuant to an application for planning permission or an application to approve details under a condition attached to a planning permission. If this notification is approved by the relevant planning authority, then the approval set out in paragraph 3.8.52 will not be required.

3.8.55. This Requirement does not apply to any part of the Order land where the undertaker demonstrates to the relevant planning authority that the relevant part of the Order land is fit for the authorised development through the provision of a remedial validation report and the relevant planning authority notifies the undertaker that it is satisfied that the relevant part of the Order land is fit for the authorised development on the basis of that report (subject to any ongoing monitoring requirements).

3.8.56. ~~3.8.53.~~Requirement 14 (Archaeology) - this is a modified model provision. It provides that no part of the authorised development may commence until a scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authority after consultation with Historic England. The scheme submitted and approved

must be in accordance with the principles set out in chapter 13 of the Environmental Statement (Document Ref. 6.2.13). Furthermore, any archaeological investigations must be carried out in accordance with the approved scheme and by a suitably qualified person or organisation approved by the relevant planning authority.

3.8.57. ~~3.8.54.~~Requirement 15 (Protected species) - this is a modified model provision. It requires that no part of the authorised development may commence until further survey work for that part has been carried out to establish the presence of any protected species. Should the survey work identify any protected species, no development of that part may be begun until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority. This Requirement is broader than the model provision in that it refers to "any" protected species, rather than just European protected species.

3.8.58. ~~3.8.55.~~Requirement 16 (Construction environmental management plan) - this is a modified version of the model provision on 'Code of Construction Practice'. It requires a Construction and Environmental Management Plan, in accordance with the framework construction environmental management plan at Appendix 5A of the Environmental Statement (Document Ref. 6.4.4) and the indicative landscaping and biodiversity strategy (Document Ref~~:~~. 5.12) has been submitted to and~~,~~ after consultation with the Environment Agency, STDC and Sembcorp, approved by the relevant planning authority before commencement of the authorised development. The plan should include all of the details set out in sub-paragraph (2). All construction works associated with the authorised development must be carried out in accordance with the approved Construction and Environmental Management Plan.

3.8.59. ~~3.8.56.~~Requirement 17 (Protection of highway surfaces) - this is not a model provision. It requires details of the condition surveys (including any post-construction surveys) which are to be carried out on the public highways to be used during construction to be approved by the relevant planning authority prior to commencement of the authorised development, save for the permitted preliminary works. The surveys must then be carried out in accordance with the approved details, as well as any necessary repairs.

3.8.60. ~~3.8.57.~~Requirement 18 (Construction traffic management plan) - this is a modified model provision. It requires a construction traffic management plan to be submitted to and approved by the relevant planning authority, following consultation with National Highways ~~England and~~ , the relevant highway authority (where that is not National Highways), STDC and Royal Mail, before commencement, save for permitted preliminary works. It also requires notices to be erected and maintained throughout the construction period at every entrance to and exit from the construction site, indicating the approved routes for traffic entering and leaving the site. The plan submitted and approved must be in accordance with chapter 16 of the Environmental Statement (Document Ref. 6.2.16) and the framework construction traffic management plan in the Environmental Statement (Document Ref. 6.4.37).

3.8.61. ~~3.8.58.~~Requirement 19 (Construction workers travel plan) - this is a modified model provision. It requires a travel plan for construction workers to be submitted to the relevant planning authorities following consultation with National Highways, the relevant highway authority (where that is not National Highways) and STDC prior to commencement of the authorised development, save for the permitted preliminary works. The plan must include measures to encourage sustainable transport; details of the responsibility for and timetable for implementation of those measures; details of parking for construction personnel~~, and~~ ; a monitoring and review regime, and the profile of activity across the day. The approved plan must be implemented within three months of the commencement of the authorised development, save for the permitted preliminary works. The plan submitted and approved must be in accordance with chapter 16 of the Environmental Statement (Document Ref.

6.2.16) and the framework construction workers travel plan in the Environmental Statement (Document Ref. 6.4.36).

3.8.62. ~~3.8.59.~~Requirement 20 (Construction hours) - this is a modified model provision. It specifies the hours in the day within which all construction work and deliveries associated with the authorised development must be carried out.

3.8.63. ~~3.8.60.~~The restrictions do not apply to work that does not exceed a specified noise limit, is approved in advance by the relevant planning authority or is associated with an emergency. The restricted hours for the delivery of materials do not apply to the delivery of abnormal indivisible loads where this is associated with an emergency or carried out with the prior approval of the relevant planning authority.

3.8.64. ~~3.8.61.~~The Requirement also permits 30 minute start-up and shut-down periods at the beginning and the end of the construction hours and the maintenance at any time of plant and machinery engaged in the construction of the authorised development.

3.8.65. ~~3.8.62.~~Requirement 21 (Control of noise ~~and vibration~~ - construction) - this is a modified model provision. It requires a scheme for the monitoring and control of noise ~~and vibration~~ to be submitted and approved prior to the commencement of the authorised development. The scheme submitted and approved must be in accordance with the principles set out in chapter 11 of the Environmental Statement (Document Ref. 6.2.16).

3.8.66. ~~3.8.63.~~Requirement 22 (Control of noise- operation) - this requires that no part of Work No. 1 or 7 may be brought in to commercial use following commissioning until a scheme for the management and monitoring of noise during operation and which is consistent with the principles set out in chapter 11 of the Environmental Statement (Document Ref. 6.2.16) has been submitted to and approved by the planning authority. The noise level is to be determined with reference to BS4142:2014.

3.8.67. ~~3.8.64.~~Requirement 23 (Piling and penetrative foundation design) - this is not a model provision. It requires that no part of Work Nos. 1 or 7 must commence, save for permitted preliminary works, until a piling and penetrative foundation design method statement, informed by a risk assessment and which is consistent with the piling mitigation measures in paragraph 10.8 of chapter 10 of the Environmental Statement (Document Ref. 6.2.16), the principles set out in chapter 11 of the Environmental Statement (Document Ref. 6.2.16) and any construction environmental management plan, for that part, has been submitted to and approved ~~with~~ by the planning authority. It requires that the planning authority must consult with the Environment Agency~~–~~, Natural England, STDC and Sembcorp on the method statement.

3.8.68. ~~3.8.65.~~Requirement 24 (Waste management on site - construction wastes) - this is not a model provision. It requires that no part of the authorised development, save for the permitted preliminary works, may commence until a construction site waste management plan for that part has been submitted to and approved by the planning authority after consultation with STDC. The plan submitted must be in accordance with the framework site waste management plan, as appended to the framework Construction Environmental Management Plan (Document Ref. 6.4.5).

3.8.69. ~~3.8.66.~~Requirement 25 (Restoration of land used temporarily for construction) - this is a modified model provision. It specifies that the date of final commissioning of each relevant Work No. must not occur until the scheme for the restoration (including remediation of contamination caused by the undertaker's activities) of any land within the Order Limits~~-~~, which has been used temporarily for construction~~-~~, has been submitted to and approved by the relevant planning authority (following consultation with STDC and Sembcorp). It stipulates that the land must be restored within ~~three years~~ one year of the date of final

commissioning of each relevant Work No. (or such other period as may be approved by the relevant planning authority), in accordance with the restoration scheme.

3.8.70. ~~3.8.67.~~Requirement 26 (Combined heat and power) - this is not a model provision. It is based, with drafting modifications, on Requirement 34 of The North Blyth Biomass Power Station Order 2013 and Requirement 39 of The Ferrybridge Multifuel 2 Power Station Order 2014. It requires that Work No. 1A must not be brought into use following commissioning until the relevant planning authority has given notice that it is satisfied that the authorised development includes space and routes through the later provision of heat pass-puts for off-site users of process or space heating and its later connection to such systems. The undertaker must maintain such space and routes for the lifetime of the authorised development and must submit a combined heat and power review to the planning authority 12 months after Work No. 1A is first brought int commercial use following commissioning. The undertaker must submit an updated CHP review to the planning authority every 4 years.

3.8.71. ~~3.8.68.~~Requirement 27 (Aviation warning lighting) - this is not a model provision. It requires details of the aviation warning lighting to be installed for the construction and operation of Work No. 1 must be approved before any part of the authorised development comprised in Work No. 1 may commence. It requires the planning authority to consult with the Civil Aviation Authority on the submitted details.

3.8.72. ~~3.8.69.~~Requirement 28 (Air safety) - this is not a model provision. It requires details of the information required by the Defence Geographic Centre of the Ministry of Defence to be submitted to and approved by the planning authority before commencement of Work No. 1 or 7, save for the permitted preliminary works.

3.8.73. ~~3.8.70.~~Requirement 29 (Local liaison committee) - this is not a model provision. It requires that before the authorised development commences, save for the permitted preliminary works, the undertaker must establish a committee to liaise with local residents and organisations about matters relating to the authorised development. Relevant interest groups ~~and~~ , the planning authority ~~,~~ , STDC and Sembcorp must also be invited, and a representative of the undertaker must be in attendance. The committee must meet every other month, starting in the month prior to commencement of the authorised development throughout construction, and then once a year during operation.

3.8.74. ~~3.8.71.~~Requirement 30 (Employment, skills and training plan) - this is not a model provision. It requires that a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction, and employment opportunities during operation, of the authorised development has been submitted to and approved by the relevant planning authority. The plan for the construction phase must be approved prior to the commencement of the authorised development, save for permitted preliminary works. The plan for the operational phase must be approved before any part of Work No. 1 is commissioned. The respective plans approved must be implemented and ~~maintain~~ maintained during the construction and operational phases of the authorised development.

3.8.75. ~~3.8.72.~~Requirement 31 (Carbon dioxide capture transfer and storage ~~consent~~) - this is not a model provision. It requires that no part of the authorised development, other than permitted preliminary works, may commence until ~~the undertaker has provided~~ evidence ~~to~~ has been submitted to and approved by the relevant planning authority that the ~~necessary consent required to enable the construction and operation of a site for the storage of the carbon dioxide captured or collected by the authorised development has been granted. This has been included to provide assurance that substantive works on the authorised development will not start unless a licence is in place for the storage of the carbon dioxide captured or collected as part of the authorised development.~~carbon dioxide storage licence has been granted, that an environmental permit has been granted for Work No. 1 (electricity

generating station) and Work No. 7 (compressor station) and that any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for offshore pipeline works from Work No. 8 (high pressure carbon dioxide export pipeline corridor) to the carbon dioxide storage site has been granted (or such licence or consent as may replace those). The undertaker must not dispose of any interest in the land required for Work No. 1C (CCP) and Work No. 7 (high pressure carbon dioxide compression station) or do anything which may reasonably diminish the undertaker's ability to prepare Work No. 1C (CCP) and Work No. 7 (high pressure carbon dioxide compression station) for construction, within two years of such action or occurrence, save where the benefit of the Order has been transferred pursuant to Article 8 (Consent to transfer benefit of this Order).

3.8.76. It requires that Work No. 1A (a combined cycle gas turbine plant) is not brought into commercial use without Work Nos. 1C (CCP), 7 (high pressure carbon dioxide compression station) and 8 (high pressure carbon dioxide export pipeline corridor) also being brought into commercial use.

3.8.77. Requirement 31 has been included to provide assurance that the electricity generating station will not be operated without carbon capture, transport and storage infrastructure coming forward in tandem.

3.8.78. ~~3.8.73.~~Requirement 32 (Decommissioning) - this is not a model provision. It requires the undertaker to submit a decommissioning environmental management plan for that part, in accordance with the Environmental Statement, and evidence that any necessary planning consents have been granted for decommissioning in relation to that part to the relevant planning authorities within 12 months of ~~it deciding to decommission~~ the date that any part of the authorised development permanently ceases operation (or such longer period as may be agreed in writing with the relevant planning authority). The relevant planning authorities must approve the ~~scheme~~ plan submitted for that part and confirm in writing that it is satisfied as to the evidence submitted for that part before any decommissioning works are ~~carried out~~ undertaken and the ~~scheme~~ plan must be implemented as approved.

3.8.79. The Applicants must make a further submission within a period of 2 months of receiving notice from the relevant planning authority that the information submitted is not approved (or such other period as may be agreed with the relevant planning authority).

3.8.80. ~~3.8.74.~~Requirement 33 (Requirement for written approval) - this is based on a model provision and confirms that the relevant planning authority's approval or agreement must be given in writing.

3.8.81. ~~3.8.75.~~Requirement 34 (Approved details and amendments to them) - this is not a model provision. It requires that all details submitted to the relevant planning authority for approval must be in accordance with the parameters in the Environmental Statement and reflect the principles of the documents submitted for certification (in accordance with Article 45). It expressly states that "approved details" includes any amendments which may be subsequently approved by the relevant planning authority.

3.8.82. ~~3.8.76.~~Requirement 35 (Amendments agreed by the relevant planning authority) - this is a modified model provision. This clarifies that where the phrase "unless otherwise agreed" appears in Requirements, it does not permit changes which could give rise to any materially new or materially different environmental effects than those assessed in the Environmental Statement. It also makes clear that where the Requirement requires consultation with another body, then any approval or agreement to any amendments must not be given without the relevant planning authority having first consulted with that body.

3.8.83. Requirement 36 (Consultation with South Tees Development Corporation) – this is not a model provision. This clarifies that where a Requirement specifies that STDC must be consulted by the relevant planning authority then this only applies to the extent that the

matters submitted for approval relate to any part of the authorised development which is within the STDC area or could affect the STDC area in the opinion of the relevant planning authority. The STDC area is defined in the Order as the administrative area of STDC.

3.8.84. Requirement 37 (Consultation with Sembcorp Utilities (UK) Limited) – this is not a model provision. This clarifies that where a Requirement specifies that Sembcorp must be consulted by the relevant planning authority then this only applies to the extent that the matters submitted for approval relate to any part of the authorised development which affects Sembcorp's operations in the opinion of the relevant planning authority.

Schedule 3 (Modifications to York Potash Order)

3.8.85. ~~3.8.77.~~Schedule 3 sets out in full a new ~~Part 3 of~~ Schedule ~~10~~ 12 to the York Potash Harbour Facilities Order 2016.

3.8.86. ~~3.8.78.~~It sets out new protective provisions for the benefit of NZT Power and NZNS Storage that will regulate the works authorised under the York Potash Harbour Facilities Order 2016 alongside the Proposed Development. Reciprocal protective provisions for the benefit of the undertakers of the York Potash project are set out in Part 17 of Schedule 12 of the Order.

Schedules 4 - 6 (Street works)

3.8.87. ~~3.8.79.~~Schedule 4 (Streets subject to street works) sets out the streets that would be subject to street works, including reference to the specific streets on the Access and Rights of Way Plans (Document Ref~~.~~ 4.5).

3.8.88. ~~3.8.80.~~Schedule 5 (Access) sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) which are referred to in Article 14 of the Order.

3.8.89. ~~3.8.81.~~Schedule 6 (Temporary stopping up of the use of streets public rights of way and access land) sets out the streets that may be subject to a temporary prohibition or restriction on the use of that street, including reference to the relevant plan, the location and the extent of the temporary prohibition or restriction on use. Schedule 6 also identifies the area of coastal access land that may be temporarily stopped up under Article 13(9) and where rights of public access under section 2 of the Countryside and Rights of Way Act 2000 may be temporarily suspended. See paragraphs 3.4.7 to 3.4.15.

Schedules 7 - 9 (Compulsory acquisition and temporary possession)

3.8.90. ~~3.8.82.~~Schedule 7 (Land in which new rights etc. may be acquired) set outs classes of new rights and restrictions which may be acquired by the undertaker and plots in relation to which each of these classes of rights can be acquired. The plot numbers in column 1 of the table correlate with the relevant plot numbers on the Land Plans (Document Ref. 4.2). The second column of the table sets out the purposes for which rights over land may be acquired, or restrictive covenants may be imposed, in relation to specific Work Nos. That ensures that the undertakers' ability to compulsorily acquire new rights in the land shown coloured blue on the Land Plans is limited to that required for the authorised development.

3.8.91. ~~3.8.83.~~Schedule 8 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965, in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. This Schedule has precedent in Schedule 7 of The Immingham Open Cycle Gas Turbine Order 2020.

3.8.92. ~~3.8.84.~~Schedule 9 (Land of which temporary possession may be taken) sets out the land temporary possession of which may be taken pursuant to Article 31 (and which as described above, cannot be compulsorily acquired). It also sets out the purpose for which such temporary possession may be taken, such as for temporary access purposes or for a construction compound or laydown area.

Schedules 10 and 11 (Deemed marine licences)

3.8.93. ~~3.8.85.~~Schedule 10 (Deemed marine licence - Project A) sets out the marine licence referred to in Article 37, which would be deemed to be granted in favour of NZT Power for Project A comprising licensable marine activities associated with:

- Work No. 5A (repair and upgrade of the existing water discharge infrastructure to the Tees Bay) - the repair and upgrade works within the existing water discharge tunnel and tunnel head;
- Work No. 5B (new water discharge pipeline to the Tees Bay) - the works to construct a replacement outfall tunnel and tunnel head; and
- Any dredging required to support the specific components above.

3.8.94. ~~3.8.86.~~Schedule 11 (Deemed marine licence - Project B) sets out the marine licence referred to in Article 37, which would be deemed to be granted in favour of NZNS Storage for Project B comprising licensable marine activities associated with:

- Work No. 5A (repair and upgrade of the existing water discharge infrastructure to the Tees Bay) - the repair and upgrade works within the existing water discharge tunnel and tunnel head;
- Work No. 5B (new water discharge pipeline to the Tees Bay) - the works to construct the replacement outfall tunnel and tunnel head; and
- Work No. 6 (CO_2 gathering network) - pipelines will cross the tidal part of the River Tees either by being installed in the existing Sembcorp No. 2 Tunnel or otherwise by HDD. Neither the HDD or Sembcorp Tunnel No. 2 options would have any direct interaction with the marine environment. The Applicants consider that both activities may be exempt from the requirement for marine licence under Article 35 of the Marine Licensing (Exempted Activities) Order 2011. The Applicants are seeking confirmation from the MMO that this activity benefits from the exemption. If that is confirmed, these activities will be removed from the deemed marine licence;
- Work No. 8 (high pressure CO_2 export pipeline corridor) - the installation of a new CO_2 export pipeline running from the onshore high pressure compression facilities on the PCC Site, south of South Gare Road and landward of the Coatham Dunes complex seaward into the Tees Bay. Construction of the CO_2 export pipeline will be using HDD techniques. The CO_2 pipeline will be wholly under the seabed within the marine licensable area of the Order land but will subsequently emerge into the sea. The Applicants have therefore included this activity with the deemed marine licence; and
- Any dredging required to support the specific components above.

3.8.95. ~~3.8.87.~~The Applicants are engaged in ongoing discussions with the MMO regarding the scope, terms of, and any conditions attached to, the deemed marine licences.

Schedule 12 (Protective provisions)

3.8.96. ~~3.8.88.~~Schedule 12 sets out protective provisions for the benefit of statutory undertakers whose land or apparatus may be affected by the authorised development, and other relevant third parties. See the Statement of Reasons (Document Ref. 3.2) for more information on the relevant parties and protections.

Schedule 13 (Procedure for discharge of requirements)

3.8.97. ~~3.8.89.~~Schedule 13 provides a clear procedure for the discharge of Requirements by the relevant planning authority. It sets out a time limit for decisions to be made within, with the ability to extend this period by agreement between the relevant planning authority and the undertaker, and a power for the relevant planning authority to request further information from the undertaker. Deemed consent provisions come into effect when decisions are not made during this time, but this cannot apply where that could be inappropriate taking into account the environmental impacts of the authorised development. This process, including the time periods and deemed consent, is considered to be appropriate in order to ensure that the delivery of the authorised development is not delayed. This Schedule has precedent in Schedule 10 of The Immingham Open Cycle Gas Turbine Order 2020. The Applicants are continuing to engage with the relevant planning authorities on Schedule 13.

Schedule 14 (Documents and plans to be certified)

3.8.98. ~~3.8.90.~~Schedule 14 sets out in a table all the documents and plans referred to in the Order and which need to be certified by the Secretary of State. The table identifies the relevant revision number and date of the document and plan.

Schedule 15 (Design parameters)

3.8.99. ~~3.8.91.~~Schedule 15 sets out the relevant parameters for Work No. 1, Work No. 3 and Work No. 7 which tie into the maximum form of development that has been assessed in the Environmental Statement (Document Ref. 6.1 - 6.4).

APPENDIX 1: SECTION 35 DIRECTION

DIRECTION BY THE SECRETARY OF STATE UNDER SECTION 35 OF THE PLANNING ACT 2008 RELATING TO THE PROPOSED NET ZERO TEESSIDE PROJECT

By letter to the Secretary of State for Business, Energy and Industrial Strategy received on 25 November 2019, Oil and Gas Climate Initiative Climate Investment Holdings LLP ("the Applicant") formally requested that the Secretary of State should exercise the power vested in her under section 35 of the Planning Act 2008 ("the Act") to direct that certain elements of the proposed Net Zero Teesside project ("the proposed Project") specified in the letter ("the Specified Elements") should be treated as development for which development consent under the Act is required. The Specified Elements of the proposed Project are;

- A CO_2 gathering network, including the CO_2 pipeline connections from the proposed Combined Cycle Gas Turbine electricity generating station and industrial facilities on Teesside to transport the captured CO_2 (including the connections under the tidal River Tees);
- A CO_2 gathering/booster station to receive captured CO_2 from the gathering network; and
- A CO_2 transport pipeline for the onward transport of the captured CO_2 to a suitable offshore geological storage site. [This does not include the complete connection to the offshore storage site itself.]

The Secretary of State requested supplementary information from the Applicant on 20 December 2019 to assist in deciding whether to give the Direction sought. Further information was received from the Applicant on 24 December 2019.

The Secretary of State is satisfied that;

- The proposed Project is in the field of energy and will be wholly within England or waters adjacent to England out to the seaward limits of the territorial sea;
- The Specified Elements of the proposed Project do not currently fall within the existing definition of a "nationally significant infrastructure project" as defined in the Act and it is, therefore, appropriate to consider use of the power in section 35 of the Act; and,
- The Applicant's request constitutes a "qualifying request" in accordance with section 35ZA (11) of the Act.

Having considered the details of the Applicant's proposals as set out in its letters of 25 November 2019 and 24 December 2019, the Secretary of State is of the view that the Specified Elements form part of the proposed Project which is nationally significant, for the reasons set out in the Annex below.

The Secretary of State has taken the decision within the conditions as required by sections 35A(2)1 (4) and (5) of the Act, and issues this Direction accordingly under sections 35(1) and 35ZA of the Act.

In deciding to issue this Direction, the Secretary of State considers that, while the Direction under section 35 of the Act in respect of the Specified Elements of the proposed Project is granted, it would only apply to the Specified Elements in so far as they form part of the Net Zero Teesside project which includes a generating station that is a nationally significant infrastructure project as defined in the Act and as described in the Applicant's letter of 25 November 2019.

THE SECRETARY OF STATE DIRECTS that, subject to the proviso in the preceding paragraph, the Specified Elements, together with any matters/development associated with them, are to be treated as development for which development consent is required.

The Secretary of State further directs in accordance with sections 35ZA(3)(b) and (5) of the Act that:

- an application for a consent or authorisation mentioned in section 33(1) or (2) of the Act for development identified in, or similar to that described in, the request to the Secretary of State for Business, Energy and Industrial Strategy for a Direction under Section 35 of the Planning Act 2008 made by Oil and Gas Climate Initiative Climate Investment Holdings LLP is to be treated as a proposed application for which development consent is required;

- the Overarching Policy Statement for Energy {EN-1) has effect in relation to an application for development consent under this Direction In a manner ~~appropriatety~~ appropriately equivalent so far as the considerations and impacts described In EN-1 are relevant to the proposed Development.

This Direction is given without prejudice to the Secretary of State's consideration of any application for development consent which is made in relation to the proposed Project,

Signed by

Gareth Leigh
Head of Energy Infrastructure Planning
For and on behalf of the Secretary of State for Business, Energy and Industrial Strategy

17 January 2020

ANNEX

REASONS FOR THE DECISION TO ISSUE THE DIRECTION

The Secretary of State is of the opinion that the Direction should be issued because:

- the Specified Elements of the proposed Project when taken together with the other elements of the proposed Project as defined in the letter of 25 November 2019 are of national significance; and
- by progressing the proposed Project through the Planning Act 2008 development consent process, it would provide the certainty of a single, unified, consenting process for the whole project within fixed timescales.