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Your Ref: EN010103
Our Ref: 13626

DWD

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Dear Mr Wheadon

APPLICATION REF: EN010103 – THE NET ZERO TEESIDE PROJECT (THE PROJECT)

LAND AT AND IN THE VICINITY OF THE FORMER REDCAR STEEL WORKS SITE (TEESWORKS SITE), REDCAR AND IN STOCKTON-ON-TEES

I write on behalf of the Applicants, Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited.

This letter provides an update to the Secretary of State further to the matter raised by Natural England (NE) in their two letters dated 20 October 2023 (the NE Letters) and the Applicants' letter to DEZNS dated 7 November. By way of summary, the information provided in this letter:

- Sets out the engagement and consultation that has been undertaken between the Applicants, NE and the Environment Agency (EA) in relation to the NE Letters.
- Confirms that the Project will not have a significant adverse effect on the Coatham Sands feature of the Teesmouth and Cleveland Coast SSSI arising from nitrogen deposition alone or in cumulation with other existing and/or approved projects, and appends the modelling which demonstrates that point.
- Summarises the response of NE and EA to the Applicants' modelling, including explaining that the Project's nitrogen deposition will be controlled by the Project's Environmental Permit.
- Sets out the law and policy applicable to the Secretary of State's consideration of this issue and confirms that the Project is in compliance with all statutory and policy requirements.

In light of the information provided in this letter and the updated consultation responses of NE and the EA, the Applicants consider there is no justification in legal or policy terms to refuse grant of the Project's development consent for reason of nitrogen deposition.

Separately, the Applicants note the new Energy NPS that were published on 22 November 2023 (the November 2023 NPS), but that they are yet to be 'designated'. The Applicants provide comment on the new Energy NPS in the last section of this response.

1. **Summary of Engagement with EA and NE**

1.1 **Engagement with the EA and NE through the DCO process**

Specifically in relation to the topic of nitrogen deposition and air quality, the Applicants have undertaken significant engagement with the EA and NE during the DCO process:

- Undertaking an Air Quality assessment that considered nitrogen deposition impacts to the Teesmouth and Cleveland Coast SSSI (specifically APP-090, APP-248, APP-249, AS-072, REP6-066 and REP12-054);
- Undertaking an assessment of the impacts of nitrogen deposition on terrestrial ecology including the Teesmouth and Cleveland Coast SSSI (APP-094);
- Meetings with the EA summarised in SoCG, in particular in March 2021 and March 2022 (REP13-017)
- Meetings with NE summarised in SoCG, in particular in January and April 2021 (REP13-018) and NE's Relevant Representation of December 2021 (RR-026) that concluded, '*Natural England is satisfied that the following issues have been adequately addressed: The assessment of the potential impacts on the Teesmouth and Cleveland Coast SPA/Ramsar/SSSI arising from operational atmospheric pollution.*'
- Concluding Statements of Common Ground with the EA [REP8-042] and with NE [REP12-124]

1.2 **Engagement with EA and NE through the Environmental Permits application process**

The Applicants submitted applications to the EA for Environmental Permits for the Projects in October 2021. Prior to submission of these applications and regularly throughout its determination, the Applicants have engaged with the EA as well as with NE in their advisory capacity.

As is set out in the NE Letters, NE advised the Planning Inspectorate during the Project's DCO Examination that the Project's process contribution for nitrogen deposition (assessed at that stage as 3.9% of the lower critical load nitrogen deposition rate) would not be likely to damage the notified features of the SSSI. However as a result of NE's updated knowledge and EA evidence, NE has recently updated their position to advise that anything above a 1% process contribution is likely to cause damage to the notified feature (Coatham Sands) of the Teesmouth and Cleveland Coast SSSI.

In addition, as a result of developing guidance that has now been issued (included in Appendix 1), the EA identified the requirement to include additional potential nitrogen deposition from amines within the assessment. It is also to be noted that the published background nitrogen deposition rates for the area had been updated since the original air quality assessment.

Between the 16th August (following first notification of the revised NE position to the Applicants on 10th August) and the 3rd October 2023 the Applicants engaged in discussion with the EA and NE in relation to modelled nitrogen deposition rates, in the context of the Environmental Permit application for the Power, Capture and Compression (PCC) part of the Project.

On the 11th October 2023 in a meeting with the EA and NE (incorrectly referenced as 12th October 2023 in NE's letter of 20th October 2023) the EA requested that the Applicants repeat the modelling for the 'generic' plant design used as the basis for the Environmental Permit application submitted in 2021. This was requested so that the modelling would account for the various new NE and EA advice and evidence as outlined above, as well as aspects of engineering for the Project that have been developed in more detail subsequent to the permit application. These updates include more realistic worst case operating hours based on the dispatchable nature of the plant, and confirmation of some

design aspects during FEED, namely the use of exhaust gas re-heat and the effectiveness of the acid wash process. The Applicants agreed to provide this updated modelling.

Further to this discussion on the 11th October, the Applicants were made aware via the PINS portal of the NE Letters.

Subsequent to the NE Letters, the Applicants have continued to engage with NE and the EA. On the 22nd November, the Applicants provided an updated modelling report to the EA and a meeting was held between the Applicants and with the EA/NE on the 27th November to discuss this report. In this meeting NE confirmed that they were content that the updated modelling demonstrates nitrogen deposition rates of lower than 1% of the lower critical load over the Coatham Sands area of the Teesmouth and Cleveland Coast SSSI. The Applicants understand that NE have communicated this position to the Secretary of State via a letter dated 28th November 2023.

During this meeting, the EA indicated that they would accept the advice of NE relating to nitrogen deposition. The EA also confirmed during this meeting that the Environmental Permit determination will continue and appropriate Emission Limit Values (ELVs) reflecting the assumptions used in the modelling will be included in the Permit. Nitrogen emissions, and hence deposition, during operation of the plant will thus be secured and controlled by the Environmental Permit.

2. **Summary of findings of the Applicants' updated modelling**

2.1 **Introduction**

The air quality impact assessment provided with the Environmental Permit application in 2021 was based on a number of worst-case assumptions in the absence of more detailed information, reflecting the early-stage of the Project design at that time. Following that original impact assessment, further refinement to the Project design and other details have become available, allowing for the air quality impact assessment to be refined. This revised modelling more accurately reflects the likely future operation of the Project and the associated N-depositional impacts, including emissions of Nitrogen dioxide (NO₂), Ammonia (NH₃) and amines. The results of this updated modelling were submitted to the EA and NE on 22nd November 2023.

This modelling demonstrates that the Project is capable of achieving less than 1% of the lower critical load nitrogen deposition rate on the protected area at Coatham Sands as requested by NE. The permitting process will ensure that the Project does not exceed this figure when operational, which is also the position taken by the EA in their comments made during the 27th November meeting (noted in Section 1, above).

The refinement to the basis for 2021 air quality impact assessment can be summarised as follows and the full report summarising the modelling is included in Appendix 2.

- 2.1.1 **Background nitrogen deposition:** background N-deposition has increased from 10.5 kgN/ha/yr used in the original assessment to 12.5 kgN/ha/yr as a result of updates to the Air Pollution Information System website¹
- 2.1.2 **Revised EA guidance on inclusion of amines and amine degradation products in air quality modelling:** Revised guidance issued in draft in October 2023 (Appendix 1) provides 'conversion factors' to be applied to air quality modelling of amine dispersion for

¹ Air Pollution Information System | Air Pollution Information System (apis.ac.uk)

assessment of the proportion of the amines and amine degradation products that will be deposited on the ground.

2.1.3 **Operating profile:** the original air quality impact assessment assumed the plant would be operational for 100% of the time. This was an overly conservative assumption for a dispatchable power plant and does not therefore provide a realistic worst-case assessment this has been revised to an average of 64% for the first 12 years of operation from 2028 to 2040 and then an average of 35% from 2040 to 2053. This is based on commercial models for operation of the plant and represents a realistic worst-case assumption.

2.1.4 **Meteorology:** Use of the average of 5 years of meteorological data, rather than 1 worst-case year, better reflecting the long-term nature of nitrogen deposition.

2.1.5 **FEED design changes:**

(a) **Exhaust gas reheat:** It has been confirmed during FEED design that exhaust gas reheat will be employed. This increases the relative buoyancy of the exhaust gases in air, thereby improving the mixing and dispersion of the exhaust gases and spreading the deposition of nitrogen more widely away from the emission point.

(b) **Amine emission rates:** It has been confirmed that amine emissions can be limited to a maximum of 1mg/m³.

(c) **Acid wash effectiveness:** It has been confirmed that the acid wash process and appropriate stack height can reduce the effects of ammonia emissions to a level that would achieve the maximum 1% of the lower critical load nitrogen deposition rate at the Coatham Sands feature of the SSSI.

2.2 Modelling Results

Figures 1 and 2 below show the anticipated N-Deposition and confirm that the Project is capable of achieving less than 1% of the lower critical load nitrogen deposition rate on the protected area at Coatham Sands as requested by NE. The full results are included in Appendix 2.

The lower critical load nitrogen deposition rate for calcareous Coastal dune grasslands (grey dunes) is 10-15 kg N/ha/yr (Appendix 2).

0.10 kgN/ha/yr deposition represents 1% of the lower end of the critical load range of 10 kg N/ha/yr.



Figure 1: 64% Operation N-Deposition Isoleths (kgN/ha/yr)

It can be seen for the 64% operational profile model, that the location of maximum N-Deposition occurs over the beach and at sea. The N-deposition over the dunes is 0.09 kgN/ha/yr (or 0.9% of the lower end of the critical load range) at the worst-case location.



Figure 2: 35% Operation N-Deposition Isoleths (kgN/ha/yr)

It can be seen for the 35% operational profile model that the location of maximum N-Deposition again occurs over the beach and at sea. The N-deposition over the dunes is 0.05 kgN/ha/yr (or 0.5% of the lower end of the critical load range) at the worst-case location.

3. **Assessment of the Project on the SSSI**

3.1 **Assessment of likely significant effects**

Paragraph 5.26 of the NE guidance on this subject² states that ‘An exceedance [of the critical load] alone is insufficient to determine the acceptability (or otherwise) of a project’. Where an exceedance of the critical load is expected, it is also necessary to consider whether the forecast dose will be imperceptible. As per paragraph 4.25 of same guidance ‘...1% of critical load/level are considered by Natural England’s air quality specialists (and by industry, regulators and other statutory nature conservation bodies) to be suitably precautionary, as any emissions below this level are widely considered to be imperceptible...There can therefore be a high degree of confidence in its application to screen for risks of an effect’. Paragraph 4.31 of NE guidance indicates this 1% insignificance threshold is applied first to the project alone and then to the project ‘in combination’ with other plans and projects. While the NE guidance document specifically references internationally important wildlife sites, the same assessment process and thresholds are applied to nationally important sites

² <https://publications.naturalengland.org.uk/publication/4720542048845824>

such as SSSIs. For example, the same 1% insignificance threshold is referenced in EA permitting guidance applicable to SSSIs as well as international sites³.

Even when the forecast dose (contribution of the plan alone or in combination with other plans and projects) exceeds 1% of the lower critical load, that does not necessarily mean that a significant adverse effect will arise, simply that further assessment is required. Paragraph 5.13 of NE guidance states that '*Natural England recommends that this same 1% threshold is not used as a means of determining whether there is an adverse effect on site integrity*' [i.e. an effect that would actually compromise the ability of a SSSI to achieve favourable condition].

3.1.1 Project alone assessment

An indicative model based on FEED designs has been presented. The modelling results in a predicted N-deposition of 0.05 - 0.09 kgN/ha/yr (or 0.5 - 0.9% of the lower end of the critical load range) at the worst-case location over the dunes. This demonstrates that the Project is capable of operating with a deposition rate of 1%, or lower, of the lower end of the critical nutrient load over the lifespan of the asset.

Therefore, in accordance with recent NE advice referred to in Section 1 of this letter, the Project would not have an adverse likely significant effect on the SSSI arising from nitrogen deposition.

3.1.2 Cumulative assessment

The EIA of the DCO application included a cumulative air quality assessment of the proposed NZT development as presented in Chapter 24 of the ES [APP-106]. This utilised the same dispersion model as the main air quality assessment at Chapter 8: Air Quality [APP-090] and included emission sources for the following four shortlisted developments scoped into the cumulative air quality assessment:

- Tees CCPP (ID 3);
- Grangetown Prairie (ID 16);
- MGT Teesside (ID 68); and
- Redcar Energy Centre (ID 77).

In addition, further cumulative impacts were assessed in the ES Addendum Bridging Document submitted to the SoS in August 2023 [Document Ref 6.6] in relation to a recent planning application for a proposed carbon capture plant at the existing Suez Energy from Waste (EfW) Facility at Haverton Hill. Of these shortlisted cumulative projects, only the proposed Redcar Energy Centre located on land close to the NZT PCC site was found to have the potential for significant cumulative effects associated with nitrogen deposition on the Teesmouth and Cleveland Coast SSSI due to Redcar Energy Centre's close proximity to both the SSSI and the Project.

As described in the Project Habitat Regulations Assessment [REP12-032], the predicted nitrogen deposition from emissions from the Redcar Energy Centre in its planning application, equates to a maximum of 16% of the annual Critical Load at the closest point of the SSSI to that scheme (approx. 1 km north-west to the area of maximum impact of the Proposed Development). It is estimated that at Coatham Sands, the nitrogen deposition from the Redcar Energy Centre would be approximately 5% of the Critical Load. In Chapter 24 of the original NZT ES [APP-106] the cumulative maximum nitrogen deposition for the NZT and Redcar Energy Centre developments together was assessed to be around 8%. Using the updated modelling, the deposition from the Project would be lower than originally

³ <https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit>

estimated (now under 1%) and as a consequence, the cumulative impact would decrease to less than 6% of the annual Critical Load owing to the reductions made by the Project since the submission of the Project's original modelling and assessment. Most of that impact is associated with the Redcar Energy Centre. It is noted that NE did not comment on air quality impacts on Coatham Sands during determination of the consented Redcar Energy Centre planning application⁴.

The Applicants note that whilst the Redcar Energy Centre development has received Planning Permission, its environmental permit application has only recently been accepted by the EA and has not yet been determined. It is therefore rational and reasonable to assume that NE's revised 1% deposition, or lower, threshold position will also fall to be applied to the application for the Redcar Energy Centre permit, consistent with their updated advice on the Project's permit application. Accordingly, it is likely that the Redcar Energy Centre will be required to achieve a lower level of deposition to that which has been assumed for the purposes of assessment within that project's planning application. The Secretary of State should therefore assume that both NE and the EA will adopt a consistent approach when determining the permit for the Redcar Energy Centre. Based on discussions with NE on 27 November, it is understood that they are content this separate regulatory process (i.e. the environmental permit process) is the appropriate mechanism to control potential cumulative effects to the SSSI arising from the operation of the Redcar Energy Centre.

In terms of assessing whether there will be adverse likely significant effects on the SSSI arising from the Project in cumulation with Redcar Energy Centre, the Applicants note that the SSSI was designated in 2015 when the background nitrogen dose to short vegetation according to the Air Pollution Information System (APIS) website⁵ was 13.07 kgN/ha/yr. Moreover, APIS shows that in the years prior to 2015 (prior to designation) the background nitrogen deposition dose to short vegetation was higher; for example being 14.7 kgN/ha/yr in 2003. The habitat has thus developed and persisted in close proximity to an operational steel works and other industrial facilities when nitrogen deposition rates were considerably higher than the lower critical load of 10 kgN/ha/yr, and higher than the maximum predicted environmental concentration for the Project including the background is 12.6 kgN/ha/yr). The total predicted environmental concentration, including the existing background, the Project and the Redcar Energy Centre combined would be a worst-case 13.1 kgN/ha/yr. This would therefore remain below historic nitrogen deposition rates under which the habitat in question developed.

Currently, the only other future project with the potential to cause significant cumulative impacts is the proposed H2Teesside development. The Statutory Consultation for this project concluded at the end of October 2023 and the DCO application for this development is currently in preparation and there is currently no publicly available information to allow an assessment of cumulative effects. This and other future projects will be subject to their own consent and permitting requirements that will allow for the cumulative position of these projects with the Project to be considered to the satisfaction of the consenting authority prior to any consent of those schemes (and so, before any cumulative impact arises).

Accordingly, making the reasonable assumption that NE's nitrogen deposition advice will be applied consistently to the determination of the application for an environmental permit for the Redcar Energy Centre, it is likely the cumulative impact would be lower than assumed by the modelling. Nevertheless, even if the cumulative figure was assumed to be 6% this is unlikely to have adverse impacts on the

⁴ https://planning.redcar-cleveland.gov.uk/Document/Download?module=PLA&recordNumber=77939&planId=550872&imageId=74&isPlan=False&fileName=325067%20R_2020_0411_FFM%20-%20Proposed%20Redcar%20Energy%20Centre%2C%20Land%20at%20Redcar%20Bulk%20Terminal%2C%20Redcar.pdf

⁵ <https://www.apis.ac.uk/>

SSSI given that it has been habituated to historically elevated nitrogen levels (14.7 kgN/ha/yr in 2003 and 13.07 kgN/ha/yr when the SSSI was designated in 2015). For these reasons the Applicants' assessment conclusion is unchanged from the Project ES and concludes that there will be no adverse likely significant effect arising from the Project in cumulation with Redcar Energy Centre or any other existing and/or approved project on air quality.

4. **Determination of the DCO**

The Applicants consider there are three statutory and policy requirements for the Secretary of State to consider when considering this issue when determining the application for development consent, as follows:

- Compliance with the EIA Regulations
- Compliance with the relevant National Policy Statements (NPSs)
- Compliance with the Wildlife and Countryside Act 1981 (WCA 1981)

4.1 **EIA Regulations**

The Applicants have set out an assessment in the previous section of this response that supplements the Environmental Statement and other substantive information provided to date. Whether it is to be regarded as "further information" or "any other information" for the purposes of the EIA Regulations, the additional information ensures that the Secretary of State has the information reasonably required for reaching a reasoned conclusion on the significant effects of the development. To recap, the Project will not give rise to an adverse likely significant effect on the Teesmouth and Cleveland Coast SSSI alone or in cumulation with other existing and/or approved projects. The information provided does not alter the conclusions on the assessment of likely significant effects as reported in the Project's Environmental Statement submitted at application or throughout examination of the Project.

4.2 **National Policy Statements**

The designated Overarching NPS for Energy (EN-1) (July 2011)

EN-1 contains policy specific to SSSIs. Paragraph 5.3.11 states:

Where a proposed development on land within or outside an SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), development consent should not normally be granted. Where an adverse effect, after mitigation, on the site's notified special interest features is likely, an exception should only be made where the benefits (including need) of the development at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs. The IPC should use requirements and/or planning obligations to mitigate the harmful aspects of the development and, where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest.

As set out above, there will be no adverse effect individually or in cumulation on the Teesmouth and Cleveland Coast SSSI and therefore, the remainder of paragraph 5.3.11 is not engaged.

If, notwithstanding that assessment, the Secretary of State were to conclude there will be an adverse impact on the SSSI, the Applicants provide below a without prejudice justification demonstrating why the Project's benefits including need, at this site, clearly outweigh any potential impact on the Coatham Sands feature of the SSSI and any broader impacts on the network of SSSIs.

The Project provided a Need Statement⁶ with the Application for development consent [document reference 5.2, [AS-015]] and Planning Statement⁷ (revised version with document reference 5.3 and dated May 2023). These Statements set out the clear need and strong policy support for the Project as part of the Government's net zero, low carbon and carbon capture and storage aims. Section 4 of the Planning Statement sets out the strong support for the Project provided by the NPS. The NPS confirm the need for the Project and Section 4 of the Planning Statement explains that substantial weight ought to be afforded to that need in the decision-making process. Furthermore, Section 5 of the Planning Statement considers recent Government energy and climate change policy, notably the Ten Point Plan, Energy White Paper, Net Zero Strategy and British Energy Security Strategy. These policy documents set out important Government objectives for decarbonising power and industrial sectors in order to achieve the legally binding target of net zero by 2050 and are important and relevant considerations to be taken into account in determining the Application. The Project will make an important contribution toward the delivery of the policy objectives set out in those documents.

In the event the Secretary of State concludes there will be an adverse impact, the benefits and need for the Project clearly outweigh that adverse impact. Those benefits are clearly set out at Section 7 of the Planning Statement and when weighed in the planning balance clearly indicate that development consent should be granted.

Revised NPS EN-1 (November 2023)

The Applicants provide analysis later in this Letter relating to the new Energy National Policy Statements (NPSs) that were published on 22 November 2023 (the November 2023 NPS). However, for the purposes of this section of the Letter specific to SSSI policy, the Applicants' also note for completeness that paragraph 5.4.8 of the November 2023 NPS contains substantially similar text to that of paragraph 5.3.11 of the July 2011 NPS (although the November 2023 NPS replicates the final sentence of the July 2011 NPS paragraph 5.3.11 in a new section at 5.4.50 of the November 2023 NPS). Accordingly, the Applicants consider that their analysis above applies equally to the November 2023 NPS.

In addition, the Applicants note the following new text set out at paragraph 4.2.15-17 of the November 2023 NPS:

Non-HRA and non-MCZ residual impacts of CNP [Critical National Priority] Infrastructure

4.2.15 Where residual non-HRA or non-MCZ impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will be refused on the basis of these residual impacts. The exception to this presumption of consent are residual impacts onshore and offshore which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.

⁶ [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002788-Applicant%20NZT%20DCO%205.3%20-%20Planning%20Statement%20\(Clean\)%20-%20May%202023.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002788-Applicant%20NZT%20DCO%205.3%20-%20Planning%20Statement%20(Clean)%20-%20May%202023.pdf)

⁷ [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002788-Applicant%20NZT%20DCO%205.3%20-%20Planning%20Statement%20\(Clean\)%20-%20May%202023.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010103/EN010103-002788-Applicant%20NZT%20DCO%205.3%20-%20Planning%20Statement%20(Clean)%20-%20May%202023.pdf)

4.2.16 As a result, the Secretary of State will take as the starting point for decision making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances.

4.2.17 This means that the Secretary of State will take as a starting point that CNP Infrastructure will meet the following, non-exhaustive, list of tests:... • where development within or outside a Site of Special Scientific Interest (SSSI) requires the benefits (including need) of the development in the location proposed to clearly outweigh both the likely impact on features of the site that make it a SSSI, and any broader impacts on the national network of SSSIs.

The Applicants consider the November 2023 NPS demonstrates enhanced policy support for CNP Infrastructure such as the Project, such that the starting point is the benefits will clearly outweigh residual adverse impacts on a SSSI.

4.3 **Wildlife and Countryside Act 1981 (WCA 1981)**

The Secretary of State (as a 's28G authority') has a general duty under s. 28G WCA 1981 to take reasonable steps, consistent with the proper exercise of his or her functions, to further the conservation and enhancement of the flora, fauna or geological or physiological features by reason of which a site is a SSSI.

Under s. 28H WCA 1981, s28G authorities are to give notice to NE before carrying out, in the exercise of their functions, operations likely to damage the feature by reason of which a site is a SSSI. S. 28H WCA 1981 sets out further requirements on NE to respond to this notice, assenting or not to the operations (with or without conditions). If NE do not assent, the s. 28G authority is to notify NE of the date on which the operations are proposed to start, how NE's advice has been taken into account and is to carry out the operation in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the designated feature of the SSSI, and to restore the SSSI to its former condition so far as is reasonably practicable if any such damage does occur.

As set out above, the Applicants consider that no adverse impacts will arise from the Project, alone or cumulatively, on the SSSI. Accordingly, the Applicants' position is that s28G WCA 1981 is not engaged. However in the event the Secretary of State concludes there will be an adverse impact on the SSSI, the Applicants note that s28G is not a prohibition on operations, but rather sets out the steps to follow where adverse impacts on SSSIs arise. The Applicants therefore consider that in the event the Secretary of State concludes that s28G is engaged, the steps outlined in the legislation will become effective and are capable of being complied with in respect of the Project.

Therefore, WCA 1981 does not present a barrier to granting development consent for the Project.

5. **New Energy National Policy Statements**

The Applicants note the new Energy NPS that were published on 22 November 2023 (the November 2023 NPS), but that they are yet to be 'designated'. The Applicants also note that the November 2023 NPS retain the transitional provisions anticipated in the previous draft, so that "for any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS" (paragraph 1.6.2).

The overarching position therefore remains as set out in the Applicants' revised Planning Statement (Document Ref. 5.3) and dated May 2023 – see section 4.2 – in relation to the relevant sections of the

Planning Act 2008 (sections 104 / 105) and the applicable NPS, albeit the March 2023 draft NPS are no longer relevant and have been replaced by the November 2023 NPS. The Applicants consider that the November 2023 NPS (and EN-1 in particular) are likely to be 'important and relevant' to the SoS' decision on the Application.

The Applicants note that the November 2023 NPS retain strong support for the need for the Project and that substantial weight should be given to this, including at paragraphs 3.2.6-3.2.7 (generally), 3.5.12 fourth bullet (in relation to CCS infrastructure), 3.3.1-3.3.7 and 3.3.57-3.3.61 (electricity generation), and 3.5 (CCS infrastructure).

The Applicants also note that the November 2023 NPS differ from the March 2023 drafts in a significant respect, in that natural gas fired generation which is carbon capture ready and CCS infrastructure are considered (amongst other development not relevant here) to be nationally significant low carbon infrastructure for which there is a 'critical national priority' (CNP). The policy on CNP is set out at section 4.2, with paragraphs 4.2.5 (bullets one, three and four) as well as paragraphs 3.3.62 and 3.5.8 confirming that those main elements of the Project are CNP infrastructure.

As the November 2023 NPS are important and relevant to the decision on the Application, subject to the weight which the SoS considers should be given to them, the policy on CNP infrastructure at 4.2.14-4.2.18 should be taken into account by the SoS in determining the Application. The Applicants consider that the November 2023 NPS, and the CNP infrastructure designation and policy in particular, point even more strongly in favour of granting development consent than was already the case.

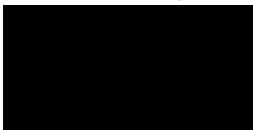
6. **Conclusion**

The Applicants have engaged proactively with the EA and NE throughout the life of the Project to date, and particularly following receipt of the NE Letters. In response to those Letters, the Applicants have provided updated modelling that demonstrates that the Project is capable of achieving less than 1% of the lower critical load nitrogen deposition rate on the protected area of the SSSI at Coatham Sands, as recommended by NE. The permitting process will ensure that the Project does not exceed this figure when operational, which is also the position taken by the EA in their comments made during the 27th November meeting (noted in Section 1, above).

The Applicants also conclude that there will be no change to the likely significant effects as reported in the Project Environmental Statement, finding that the Project will not have an adverse likely significant effect on the SSSI, alone or cumulatively, arising from nitrogen deposition.

The Applicants have provided analysis against the EIA Regulations, the NPSs (including the new, not yet designated NPS) and the WCA 1981 confirming the Project's compliance with law and policy. The Project is fully in accordance with legal and policy requirements and the Applicants consider that the matter identified in the Natural England Letters has been adequately addressed.

Yours sincerely,



Geoff Bullock
Director – Head of Planning
DWD – on behalf of NZT Power Limited & NZNS Storage Limited

Appendix 1: Developing Environment Agency Guidance

Appendix 2: Technical Note to the Environment Agency and Natural England on Nitrogen Deposition