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Ref: EN010116

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13 March 2025

Dear Mr Jones,

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE NORTH LINCOLNSHIRE GREEN ENERGY PARK

1. Introduction

1.1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the Examining Authority's ("ExA") report dated 15 August 2023. The ExA consisted of two examining inspectors, Edwin Maund and Philip Brewer. The ExA conducted an Examination into the application submitted on 31 May 2022 ("the Application") by North Lincolnshire Green Energy Park Limited ("the Applicant") for a Development Consent Order ("DCO") ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the North Lincolnshire Green Energy Park and associated development ("the Proposed Development"). The Application was accepted for Examination on 27 June 2022. The Examination began on 15 November 2022 and closed on 15 May 2023. The Secretary of State received the ExA's Report on 14 August 2023.

1.2. On 22 September 2023 the Secretary of State issued a consultation letter to the Applicant, Anglian Water (AW), Natural England (NE), Cadent Gas, Jotun Paints, the Health and Safety Executive (HSE) and North Lincolnshire Council (NLC) seeking information on several matters ("the first consultation letter"). On 15 November 2023 the Secretary of State issued a Written Ministerial Statement resetting the statutory deadline for the decision to 15 March 2024. A further consultation letter was issued on 8 December 2023 to the Applicant, NLC, NE and the Environment Agency (EA), requesting further information ("the second consultation letter"). The Secretary of State issued a letter to the Applicant on 14 February 2024 seeking a final update on the progress of securing mitigation for the effects on the Risby Warren Site of Special Scientific Interest (SSSI)

("the third consultation letter"). The Applicant responded on 21 February 2024 and 1 March 2024 confirming that the Section 106 agreement had not yet been secured.

1.3. On 4 April 2024, the Defra Minister of State issued a Direction to the Environment Agency, under regulation 62 of the Environmental Permitting (England and Wales) Regulations 2016, to temporarily pause the determination of environmental permits for certain new waste incineration facilities, including Energy from Waste and Advanced Thermal Treatment, until 24 May 2024.[1] A letter accompanying the Direction stated that the pause was to allow a short period for Defra officials to lead a piece of work considering the role of waste incineration in the management of residual wastes in England.[2] On 9 May 2024 the Secretary of State for the Department for Energy Security and Net Zero issued a Written Ministerial Statement resetting the statutory deadline for the decision for the Application to 18 July 2024. On 18 July 2024 the Secretary of State for the Department for Energy Security and Net Zero issued a further Written Ministerial Statement resetting the statutory deadline for the decision for the Application to 18 October 2024. On 20 September 2024 a letter was sent from the Department for Energy Security and Net Zero to Defra requesting an update on Defra's intentions regarding the research they conducted considering the role of waste incineration in the management of residual wastes in England. Defra responded on 7 October 2024 confirming that it intended to publish a Residual Waste Infrastructure Capacity Note before the end of 2024. On 17 October 2024 the Secretary of State for the Department for Energy Security and Net Zero issued a further Written Ministerial Statement resetting the statutory deadline for the decision for the Application to 14 March 2025. Defra's *Residual Waste Infrastructure Capacity Note* was published on 30 December 2024.[3] The Secretary of State for the Department for Energy Security and Net Zero consulted with all interested parties on 10 January 2025 inviting comments on Defra's Waste Infrastructure Capacity Note ("the fourth consultation letter"). The responses received are summarised at paragraphs 4.76 to 4.81.

1.4. The development proposed comprises an electricity generating station, with a capacity to process up to 760,000 tonnes of refuse derived fuel per annum, with a gross generation capacity of up to 95 megawatts. In addition to this principal development a series of associated elements are proposed in support of the project, the main elements of which comprise:

- Carbon capture utilisation and storage facility;
- Concrete block manufacturing facility;
- Plastic Recycling Facility (PRF);
- Battery storage facility capable of peak discharge of 30MWe;
- Bottom ash and flue gas residue handling and treatment facility;
- Reinstatement of the railway line between Flixborough Wharf and the Dragonby sidings;

[1] https://assets.publishing.service.gov.uk/media/66100712a43d91001c3af20e/waste-incinerators-permitting-direction-240404.pdf
[2] https://assets.publishing.service.gov.uk/media/661007689f92ac001a516d6f/minister-spencer-to-EA-CEO-240404.pdf
[3] https://www.gov.uk/government/publications/residual-waste-infrastructure-capacity-note/residual-waste-infrastructure-capacity-note

- New railhead and sidings;
- New access road linking the B1216 and Stather Road;
- Electric vehicle charging and hydrogen vehicle refuelling station; and
- Private wire and district heating networks providing heating and/or cooling, pipes carrying hydrogen gas and pipes carrying carbon dioxide to end users inside and outside of the Order Limits.

1.5. The Applicant also seeks compulsory acquisition ("CA") and temporary possession ("TP") powers, set out in the draft Order submitted with Application.

1.6. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapters 5-7 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 10. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

2. Summary of the ExA's Report and Recommendation

2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- Air Quality
- Climate Change
- Compulsory Acquisition (CA) and Temporary Possession (TP)
- Cultural Heritage
- Design and Layout
- Draft Development Consent Order
- Ecology and Biodiversity
- Environmental Impact Assessment and Environmental Statement
- Flood Risk, Hydrology and Water Resources
- Geology and Land Contamination
- Habitats Regulations Assessment
- Health
- Landscape and Visual Amenity
- Major Accidents and Hazards
- Noise and Vibration
- Planning Policy
- Socio-Economics
- Traffic and Transport
- Waste

2.2. The ExA recommended that the Secretary of State should withhold consent, their recommendation in section 10.2.1 (page 307 of the ExA report) is as follows:

"For all of the above reasons and having had regard to the LIR [Local Impact Report] produced by NLC as well as our findings and conclusions on important and relevant matters set out in this report, we conclude that the case for the development has not been made and that development consent should not be granted".

2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendations.

3. Summary of the Secretary of State's Decision

3.1. Section 104(2) of the 2008 Act requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement ("NPS"). Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.

3.2. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").

3.3. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to the Secretary of State's consultation letters. 97 Relevant Representations (RRs) were made in respect of the Application and two additional late RRs were accepted into the Examination [ER 1.4.22]. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has had regard to the Local Impact Report (LIR) submitted by NLC, environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act including relevant policy set out in the 2011 NPSs EN-1, EN-3 and EN-5.

4.2. The Energy White Paper, Powering Our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as EN-1, EN-3 and EN-5 and this letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs throughout the Examination and in the ExA's Report, with draft NPS EN-1, draft NPS EN-3 and draft NPS EN-5 considered important and relevant. Revised draft NPSs were released on 22 November 2023 and designated

in Parliament on 17 January 2024 ("the 2024 NPSs"). The ExA did not consider the November 2023 versions, now the 2024 NPSs with minor amendments, as they were released following the close of the Examination.

4.3. The transitional guidance in the DESNZ consultation paper 'Planning for New Energy Infrastructure' makes clear that the assessment of any decision-making about NSIP applications in progress during the review of the NPSs should continue to be made with reference to the currently designated NPS suite which then remained in force. The 2011 NPSs therefore form the basis of the Secretary of State's consideration of the Application. This position is also set out at paragraph 1.6.2 of 2024 NPS EN-1. The ExA stated that it had considered the application in light of the adopted NPS and considered the consultation draft NPS as important and relevant in line with the advice set out in the 30 March 2023 draft EN1-EN5 consultation documents [ER 3.3.14]. The ExA also sought the views of the Applicant and IPs on the status of the 30 March 2023 draft EN1-EN5 consultation documents in its third written question [PD-015] [ER 3.3.12].

4.4. 2024 EN-1 paragraph 1.6.2 states 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 NPSs, nevertheless, the Secretary of State has had regard to the designated 2024 NPSs in deciding the Application, and addresses these where relevant within this letter. The Secretary of State does not consider that there is anything contained within them that would lead him to reach a different overall decision on the Application than has been reached by relying on the 2011 NPSs. The Secretary of State has also had regard to the updated National Planning Policy Framework ("NPPF") from December 2023 which was released after the close of the Examination and similarly finds that there is nothing in the updated NPPF which would lead him to reach a different decision on the Application.

4.5. The Secretary of State has also had regard to the British Energy Security Strategy ("BESS") published on 7 April 2022, which outlined steps to accelerate the Government's progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power.

4.6. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Air Quality – no weight for or against;
- Cultural Heritage – moderate adverse weight;
- Design and Layout – no weight for or against;
- Health – no weight for or against;
- Landscape and Visual Amenity – moderate adverse weight;
- Major Accidents and Hazards – no weight for or against;
- Noise and Vibration – no weight for or against;
- Socio-Economics – substantial positive weight;
- Traffic and Transport – little positive weight.

4.7. The paragraphs below set out the Secretary of State's consideration of those matters listed above and other matters where the Secretary of State's conclusions differ from

those of the ExA or where unresolved issues raised by the ExA have been addressed and considered by the Secretary of State since the close of the examination.

Climate Change

4.8. The Applicant reported the GHG emission of the Proposed Development in its average case as 76,008 tpa CO2e [ER 5.3.26]. According to the Applicant, this figure minus equivalent unabated CCGT power generation and RDF landfill disposal results in a net benefit of -6,066 tpa CO2e [ER 5.3.24]. United Kingdom Without Incineration Network (UKWIN) disagreed with the Applicant's assessment and both the Applicant and UKWIN made detailed submissions during the examination regarding GHG emissions caused by the Proposed Development compared with the alternatives for waste treatment and power generation. The ExA noted that there remained areas of disagreement, for example over the scoping out of construction and decommissioning, but both parties agreed that the composition of the RDF underpins the GHG assessment in the ES [APP-054] [ER 5.3.53]. The ExA considered the scoping out of construction and decommissioning GHG emissions to be inconsistent with draft EN-1 paragraph 5.3.4, and agreed with UKWIN that this would add around 10,000 tpa CO2e [ER 5.3.54]. The ExA considered there remained considerable doubt as to whether any 'net benefit' or 'net disbenefit' can be ascertained with any certainty [ER 5.3.56] and ascribed neutral weight in the planning balance to the issue of climate change [ER 5.3.58].

4.9. The ExA raised concerns regarding the extent to which GHG mitigation that would be provided by Carbon Capture Utilisation and Storage (CCUS) is secured by the corresponding Requirement 19 which specifies the commissioning timescales in the draft DCO [REP10-004]. The ExA considered that this allows for a reasonable argument to be made that would delay indefinitely the commissioning of the CCUS facilities. Paragraphs 4.63-4.65 and 4.82 of this letter discuss a letter sent to the Applicant on 22 September 2023 enquiring how Requirement 19 secures the construction and operation of the Concrete Block Making Facility. The Applicant's response also discusses the commissioning timescales with regard to CCUS. The Secretary of State notes that any variation to commissioning timescales would have to be approved by the relevant local planning authority and he accepts the Applicant's assertion that any delays are not in its best interest. This concern has not, therefore, had any influence on the Secretary of State's consideration of the weighting he has ascribed to the issue of climate change.

The Secretary of State's Conclusion

4.10. The Secretary of State disagrees with the ExA's weighting with regard to climate change as 2024 EN-1 para 5.3.11 recognises that operational GHG emissions are a significant adverse impact. The Secretary of State agrees with the ExA that the construction and decommissioning GHG emissions should not be scoped out and even if the Applicant's view that the development will result in a net benefit of -6,066 tpa CO2e were to be accepted, with the addition of around 10,000 tpa CO2e associated with the construction and decommissioning, the development would still result in around 4,000 tpa CO2e. Whilst the 2024 NPS EN-1 states that operational GHG emissions are not reasons to prohibit the consenting of energy projects or to impose more restrictions on them, operational GHG emissions can be ascribed weight in the planning balance. The Secretary of State, therefore, ascribes minor adverse weight against the making of the DCO to the issue of climate change.

Ecology and Biodiversity

4.11. The ExA was satisfied that the Applicant had carried out a suitable ES as required by paragraphs 5.3.3 and 5.3.4 of NPS-EN1 [ER 5.6.130]. The Applicant acknowledged that there are significant residual adverse effects at a site level on badger, breeding birds and migratory/wintering birds [ER 5.6.122], however, the ExA concluded that the harm that would arise to species and habitats of principal importance would be outweighed by the benefits of the Proposed Development, therefore, paragraph 5.3.17 of 2011 NPS EN-1 was satisfied [ER. 5.6.131].

4.12. The Applicant also proposed in their Biodiversity Net Gain (BNG) report [Appendix I of APP-058] a BNG of at least 10% through a mixture of land management and repurposing, which incorporates ponds, planting and appropriate management to facilitate an enhancement in this respect [ER 5.6.42]. The ExA recognised that this goes beyond what policy currently requires and considers that this should be given moderate weight in favour of the Order being granted [ER 5.6.132].

4.13. NE identified at the outset concerns with regard to the effect of the Proposed Development on soils. While the matter of soils remained unresolved between NE and the Applicant at the end of the examination, the ExA were content that the arrangements in place would provide for suitable soil management arrangements both during construction and any potential future decommissioning through the principles set out in the outline Soil Management Plan (SMP) and the requirement to have a SMP prepared as part of the Construction Environmental Management Plan (CEMP) pursuant to Requirement 4 of the dDCO [ER 5.6.127 – ER 5.6.128].

4.14. NE also identified at the outset concerns with regard to the effect of the Proposed Development on the Best and Most Versatile (BMV) land. The ExA was satisfied that the Applicant had, through consultation and design iterations, sought to minimise impacts on BMV land where possible and that while there are areas of BMV within the application site the retention of agricultural use for large swathes of the site remain, as per the test in 2011 NPS-EN-1 [ER 5.6.98]. The ExA considered the permanent loss of 12.2 ha of BMV to be minor adverse and to only have little weight against the making of the Order [ER 5.6.129].

4.15. When considering the Applicant's original modelling NE advised that the Applicant had provided insufficient evidence to establish that there will be no adverse impacts on Thorne and Hatfield Moors SPA (Special Protection Area), Thorne Moor SAC (Special Area of Conservation) and Humber Estuary SAC/SPA/Ramsar site. NE also advised that the Applicant had provided insufficient evidence to establish that the project is not likely to damage features of interest of the Humber Estuary SSSI (Site of Special Scientific Interest), Thorne Crowle and Goole Moors SSSI, Risby Warren SSSI and Messingham Heath SSSI [RR-090]. The Applicant submitted a revised assessment based on what was described as a Reasonable Operating Case (ROC). The modelling approach used originally within the ES and based on the Rochdale Envelope as defined by the Applicant, included several worst-case scenarios, hence the Applicant considers the effects were overstated [ER 5.6.88]. In the ROC modelling the effect was reduced in terms of lower process contribution (still significant for acid, but not for ammonia and nitrogen deposition) [ER 5.6.99], however, even if the ROC case were to be relied upon, the Applicant had not resolved the issue in respect of the significant adverse effect on the Risby Warren SSSI [ER 5.6.108]. The ExA did not agree that the ROC case which NE

have relied upon to inform their final conclusions as set out in the final SoCG [REP10-010] can be relied on to predict future emissions from the Proposed Development as the ROC was not secured [ER 5.6.135].

4.16. The Applicant was in the process of trying to reach agreement with a neighbouring landowner to cease using the neighbouring land for farming pigs. In addition to the above proposed mitigation, the Applicant has asked Lincolnshire Wildlife Trust to include the management of the land within the Risby Warren SSSI in Unit 5 as an extension to their management and maintenance of the BNG commitment within the Project red line boundary. NE confirmed that the combination of the cessation of pig farming, with the habitat management plan, could bring significant benefit to the condition of the Risby Warren SSSI [ER 5.6.111]. Neither of these had been secured by the close of the Examination, nor were they submitted to the Examination and the ExA could not therefore take these into consideration [ER 5.6.113]. The ExA concludes that that this must be given substantial weight against the Order being made.

4.17. In the first consultation letter, the Applicant was asked to provide further justification for the reliance on the ROC when the ROC is not secured as the worst-case scenario for the emissions from the Proposed Development. NE were also requested to provide further information as to why it is content [REP8-036] that the ROC modelling parameters are an acceptable basis for the assessment and identification of effects from operational emissions to air. The Applicant provided further details concerning the rationale behind undertaking the ROC assessment. NE considered that there was still a reasonable degree of precaution in the modelling as it is stated that usage of reagents and production of residues is still based on a worst case, and there were also no changes made to emissions modelling for the back-up generator and ERF (Energy Recovery Facility) boilers. NE also stated that worst case meteorological data have also been used and the pollution from traffic was also adjusted in the ROC scenario to take account of the access road being relocated away more than 200m from the Humber Estuary SAC/Ramsar and SSSI. The further detail provided by both parties, however, does not provide enough justification to disagree with the ExA's conclusions on this matter. The Applicant was also asked for further information and an update on the potential cessation of pig farming on neighbouring land to mitigate effects on Risby Warren SSSI. They confirmed that whilst they were expecting to implement the measures through a Section 106 Agreement, as preferred by NE, this was yet to be secured.

4.18. In the second consultation letter, the Applicant, NE and NLC were asked to comment on the suitability of the Section 106 agreement and the wording proposed for incorporating the agreement within the DCO.

4.19. NE and NLC confirmed that they considered the Section 106 agreement to be a suitable mechanism to secure the mitigation and had no objection to incorporating the agreement within the DCO. The Applicant did not consider that this was necessary, however, and stated that if the Secretary of State takes a different view on the planning balance such that the adverse effects at Risby Warren tip the balance and would lead the Secretary of State to be minded to refuse the DCO, a requirement could be imposed on the DCO in the following terms to secure the necessary avoidance or mitigation of adverse effects:

No part of the energy park works may come into operation unless and until either:

(a) The undertaker has submitted to the relevant planning authority a report which demonstrates that the emissions from the authorised development will not exceed 1% of

the critical load of acid deposition for the authorised development alone on the Risby Warren SSSI and the relevant planning authority in consultation with Natural England has approved the report; or

(b) The undertaker has secured alternative adequate mitigation and / or compensation of the identified residual effects at the Risby Warren SSSI arising from the authorised development alone and this mitigation and/or compensation has been approved by the relevant planning authority in consultation with Natural England.

4.20. In response to the other questions posed in the second consultation letter, EA confirmed that they do not use ROC as a basis for assessment of emissions to air and any environmental impacts.

4.21. NE confirmed that, in principle and subject to the provision of all required information, they did not foresee a reason why:

- a PS licence for badger would not be granted;
- the developer would be unable to utilise the scheme for Great Crested Newts (GCN).

4.22. NLC confirmed it has no outstanding objection or concern in respect of Habitats of Principle Importance.

4.23. In the third consultation letter, the Applicant was asked to provide a further update on whether the Section 106 agreement had been secured. The Applicant confirmed on 21 February 2024 and 1 March 2024 that no agreement had been reached.

The Secretary of State's Conclusion

4.24. The Secretary of State notes that the ExA [ER 5.6.99] incorrectly reports the conclusions of the original ES [APP-058], that the Applicant concluded a significant adverse effect to the Humber Estuary SSSI, Messingham Heath SSSI, Thorne Crowle and Goole Moores SSSI and Risby Warren SSSI. The ES only concludes significant adverse effects on Risby Warren SSSI, however NE [RR-090] originally advised that it disagreed with the ES conclusions and considered that significant effects could not be excluded for all four SSSIs. Regarding nationally designated sites, NE considered that the Applicant provided insufficient evidence to establish that the Proposed Development is not likely to damage features of interest of the nationally designated sites.

4.25. Regarding Risby Warren SSSI, the Secretary of State agrees with the wording provided by the Applicant post-Examination for the requirement in the DCO to secure the necessary avoidance / mitigation of residual adverse effects. Following the requirement secured in the DCO, the Secretary of State now considers that an otherwise significant adverse effect on the Risby Warren SSSI will be adequately mitigated.

4.26. Regarding effects on the other SSSIs the Secretary of State agrees with the ExA that the updated ROC values [AS-026] are an inappropriate basis to assess harm for EIA or HRA purposes, as they do not represent the 'worst case scenario', as advised in PINS Advice Note 9. Consequently, the Secretary of State has used NE's initial advice in its draft SoCG [REP4-021] to come to his conclusion on the harm from the Proposed Development to SSSIs, other than Risby Warren. In its draft SoCG, NE advised that the Proposed Development could lead to an adverse effect on the Humber Estuary SSSI, Messingham Heath SSSI and Thorne and Crowne Goole Moors SSSI.

4.27. Hereafter the Secretary of State considers the potential harm to the Humber Estuary SSSI, Messingham Heath SSSI and Thorne and Crowne Goole Moors SSSI based on the Applicants original ES modelling [APP-058] and reporting in their original report to inform the HRA [APP-043].

Humber Estuary SSSI

4.28. For the Humber Estuary SSSI, Table 7 in the original HRA [APP-043] showed the original emissions analysis, which used the critical levels ("CL") for vascular plants (3 µg m-3) for the European sites. The assessment included Humber Estuary SAC and Ramsar site, which shares the same area as the Humber Estuary SSSI. This table shows ammonia levels were predicted to be exceeded with the process contribution ("PC") for ammonia at the sites being 1.6% of the CL, and the Predicted Environmental Contribution ("PEC") coming in at 120.9% of the CL. The PC is considered to be a significant contribution where the PC is above 1%, and/or the PC is under 1% but the PEC is over 70% of the CL, therefore the ammonia levels can be seen to potentially be at a significant level. Table 6 also showed that the PC for the Humber Estuary SAC and Ramsar (and therefore the Humber Estuary SSSI) for 24 hour NOx emissions were 48.7% of the CL, and therefore in exceedance of the 10% limit for that metric. Finally, Table 10 shows the PC exceeded 1% of the CL (2.3%) and the PEC exceeded the 70% threshold for Atlantic salt meadow and estuary habitat types (146.9%).

4.29. In response to concerns from NE about the levels of ammonia, the Applicant argues [REP4-021] that the analysis was based on modelling using a new emission limit, and that previously ammonia emissions were based on data from other operational plants and not using an actual emissions limit. They continue, saying that in practice most plants operate at much lower emission levels, typically in the range 60-80% below the ammonia emission limit, and therefore the impacts are greatly overstated. They state this also applies for nitrogen deposition impacts. Although usually a topic that is agreed at the environmental permitting stage, the Applicant committed to setting out and achieving specific levels of ammonia that would avoid adverse effects on the Humber Estuary SSSI, within the DCO. However, these limits were not added by the Applicant, and therefore the Secretary of State cannot accept this as mitigation against an adverse effect on the Humber Estuary SSSI.

4.30. In terms of nitrogen deposition and its effect on the reed bed, the Applicant originally argued that the reed bed was not a qualifying feature of the site. However, NE [REP4-021] advised that while not specifically set out as a designated feature, it considers reed bed to be a part of the salt marsh feature of the Humber Estuary. The Secretary of agrees and considers the reed bed to be an intrinsic part of the sites Pioneer saltmarsh and Atlantic salt meadow qualifying features. The Applicant does not directly respond to NE's point, instead pointing out that whilst the reed bed are the largest species affected by the nitrogen deposition, reed beds are a habitat that is more of a transitional community at the extreme upper end of the saltmarsh, which can tolerate additional nutrient input, and would be unlikely to be affected greatly by the additional levels of deposited nitrogen.

4.31. The Secretary of State acknowledges the Applicant's argument that the reed bed is likely tolerant to high levels of nitrogen deposition, however as NE, the governments statutory advisor for nature, have not confirmed that they agree with this analysis (as they made their final comments based on using the ROC), on a precautionary basis the Secretary

of State considers that deposited nitrogen has the potential to cause an adverse effect to the reed beds, which he considers an integral part of the sites qualifying features.

Thorne and Crown Goole Moors SSSI

4.32. The Applicant's original draft HRA [APP-043] predicted that the background ammonia level and deposited nitrogen level exceeded the critical loads for this site when the site is considered in combination with Keadby 2 and 3. In their first SoCG [REP4-021], NE agreed with the Applicant that, alone, the development will not have a significant effect on the SAC (which is underpinned by the Thorne and Crowne Goole Moors SSSI), but that there was potential for an impact in-combination with Keadby 2 and 3.

4.33. In terms of mitigating for ammonia deposition, the Applicant proposed adopting the same approach that they have used for the Humber Estuary SSSI. As explained above, the Applicant did not secure this mitigation in the final DCO, and therefore the Secretary of State cannot accept this as suitable mitigation, and assesses there is a potential for an adverse effect from ammonia.

4.34. For deposited nitrogen, the Applicant discusses the approach taken for the Thorne Moors SAC, which is underpinned by the Thorne and Crowne Goole Moors SSSI. The Applicant noted that the deposited nitrogen could result in vegetative changes but was considering opportunities for mitigation actions which could be undertaken through agreements with Lincolnshire Wildlife Trust. The Secretary of State has considered the potential agreements with Lincolnshire Wildlife Trust the Applicant points out in Ref 10 of the draft SoCG [REP4-021]. He considers that the cessation of pig farming and associated landscape management, as suggested by the Applicant, is a significant benefit of the Proposed Development, but has decided that it is intended to mitigate/compensate the harm caused the Risby Warren SSSI, and while it will likely have benefits for the Thorne and Crowne Goole Moors SSSI, the Secretary of State does not consider he has sufficient evidence to decide that the cessation of pig farming will directly mitigate the harm to the Thorne and Crowne Goole Moors SSSI and from a precautionary approach considers an adverse effect on the sites' qualifying features is still possible.

Messingham Heath SSSI

4.35. Using the original modelling, Section 4.4 of the ES Ecology and Nature Conservation [APP-058] identifies that the PC of acid deposition from the Proposed Development during operation is 1.1% of the CL for the Messingham Heath SSSI. This exceeds the 1% threshold for acid grassland habitats. The Applicant justifies the exceedance by arguing that the lowland dry acid grassland which could be affected is in an 'unfavourable recovering' state, and the lichen grassland on site is in a 'favourable' condition despite the high background levels of nitrogen and sulphur which could suggest that the plant populations on site are resilient to higher levels of nutrient deposits. They further argue in 4.4.1.4 [APP-058] that as the level is "so close to the 1% exceedance threshold (under which no significant contributions of acid deposition are expected), it is not expected that there will be effects as a result of acid deposition on this SSSI."

4.36. However, in their draft SoCG [REP4-021], NE commented that it does not accept the approach of rounding down to a whole number, citing concerns that this could allow multiple process contributions which are over the limit to be screened out entirely, even though when added together the effect would be significant. NE referred to the

'Greenpeace Netherlands v. State of the Netherlands' (2020) case, more commonly known as the Dutch Nitrogen Ruling.

4.37. In the draft SoCG [REP4-021], the Applicant argues that it did not screen out harm to Messingham Heath SSSI solely due the fact that it considered the acid deposition exceeding the limit by 0.1% was close to the threshold. The Applicant states that the original modelling was formed from a number of precautionary, additive layers, using worst case data for parameters such as weather and emission limits. The Secretary of State considers that the Applicant's original assessment (with multiple 'worst case scenarios') was correct, and if using this analysis, the limits are exceeded, meaning the site may be potentially harmed. The Secretary of State acknowledges that while in reality it is likely that the effects will not be as severe as predicted, he must make his decision using the worst case scenario, and therefore assesses that the site could be adversely affected by acid deposition.

4.38. NE updated its initial comments after considering the Applicant's ROC modelling, as the new modelling showed the 1% limit was not exceeded, and although there was still a slight exceedance in the level for the cumulative assessment, NE agreed it would not damage or destroy the interests features as the relevant habitats are in favourable condition. The Secretary of State agrees with the ExA and disagrees with NE's final conclusion on this matter, as he does not accept the ROC is a worst-case scenario, as it has not yet been secured.

4.39. In his decision, the Secretary of State has paid attention to the Dutch Nitrogen Ruling, which makes clear that small contributions should not be disregarded entirely. Consequently, the Secretary of State concludes that using the original modelling, it can be determined that there could be an adverse effect on the qualifying features of the Messingham Heath SSSI from acid deposition from the development alone.

Need Outweighing Harm

4.40. The Secretary of State also acknowledges that while the development could cause harm to the sites, the Defra Residual Capacity Note shows that there is a need for a waste processing facility in this region of England. Without this facility, other methods of disposing of waste, such as landfill, may have to be used, which also produce gases which can be detrimental to the qualifying features of these sites, often in higher quantities. In this instance, the Secretary of State considers that the adverse effects experienced by the qualifying sites of the SSSIs is outweighed by the need for this facility, in this area. A further discussion on the need for this development for waste treatment can be found in the Waste section of this letter (from paragraph 4.62).

Summary of Harm to SSSIs

4.41. The Secretary of State has considered the Applicant's ROC modelling which predicts that in reality, the harms on the SSSIs are likely to be of a lesser extent than originally predicted, and notes that NE were content with the ROC modelling, advising that the only SSSI with outstanding harm would be Risby Warren SSSI. The Secretary of State considers that the reduced effects on SSSIs resulting from changes in air quality can be realised through the Environmental Permitting process.

4.42. However, as the Applicant has declined to secure the parameters used in the ROC modelling at this time, the Secretary of State has made his decision based on a realistic worst case scenario in line with PINS advice pages, and the precautionary principle, using the original modelling [APP-058]. Using this original modelling, the Secretary of State considers the harm to the Humber Estuary SSSI, Thorne and Crowne Goole Moors SSSI, and Messingham Heath SSSIs to be a significant adverse effect from the development. The Secretary of State attributes great negative weight to the harm to these SSSIs, which is given substantial weight against the making of the order. However, the Secretary of State notes NPS EN-1 paragraph 5.3.11 which states that:

> "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." (emphasis added).

4.43. The Secretary of State has assessed that the Defra's evidence note has shown that the there is a strong need case for the development, which outweighs the substantial adverse effects on the 3 SSSIs. The Secretary of States's reasoning behind the needs case for the development is further discussed in paragraphs 7.7 to 7.8 of this letter.

The Secretary of State's overall conclusion

4.44. There remain significant adverse effects on the Humber Estuary SSSI, Messingham Heath SSSI, Thorne Crowle and Goole Moores SSSI and habitats and species of principal importance at a site level, notably grassland HPI and breeding and wintering/migratory birds. The Secretary of State agrees with the ExA that the harm to species and habitats of principle importance would be outweighed by the benefits of the Proposed Development at this particular location, therefore, satisfying paragraph 5.3.17 of 2011 NPS EN-1 [ER 5.6.131]. He does not, however, agree with the ExA's conclusion that the tests in EN-1 set out in paragraph 5.3.11 have not been met [ER 7.2.19] as he considers that the harm to the three SSSIs would be outweighed by the benefits of the Proposed Development and the strong need case presented in Defra's evidence note at this particular location. He, therefore, ascribes these harms moderate weight against the making of the Order. The moderate weighting is arrived at in recognition of the adequate mitigation of the significant adverse effect on the Risby Warren SSSI, which is of a greater scale and significance compared to the impacts on the other three SSSIs. However, the levels of significant harm that the Proposed Development would cause to the three SSSIs and the habitats and species of principal importance mean that this weighting is at the higher end of the moderate scale.

<u>Flood Risk and Hydrology</u>

4.45. The Secretary of State agrees with the ExA's conclusions in respect of water courses, flood risk, the Water Framework Directive (WFD) and ground conditions. The ExA considered that there are no matters relating to water courses, WFD and ground conditions which would weigh for or against making the Order and the ExA ascribed little weight against making the Order with regard to flood risk.

4.46. With regard to water resources, the ExA noted that AW identified a risk of insufficient water supplies available to meet the new and expanded water demands for non-domestic uses from planned projects in water resource zones across the Anglian Water region [ER 5.7.93]. AW commented on a Technical Statement prepared by the Applicant at [REP9-024] advising that they are unable to guarantee a potable water supply in the early stages of the project (affecting the construction of the Proposed Development in the short term [ER 5.7.108]) but have continued working with the Applicant with positive engagement to reach an agreement. The Applicant explained in [AS-033] how they will continue to work with AW to explore reasonable avenues for limiting water demands and providing water supply for the project. The ExA concluded that despite this, the water supply was not secured for development at the end of the examination and remained an outstanding issue, with the lack of water supply weighing against the making of the Order [ER 5.7.114].

4.47. Following receipt of the ExA's Report, the Secretary of State requested an update and/or information on how the necessary water supply will be secured for the building and operation of the plant from the Applicant and AW in the first consultation letter. The Applicant's response dated 20 October 2023 confirmed that the Applicant and AW had prepared a joint statement confirming how the water supply will be secured for the construction and operation of the development. The Applicant has further reduced the water demand for the project using efficient strategies to treat water and trade effluent from the Carbon Capture Utilisation and Storage Facility. AW confirmed that it is their legal responsibility, and they have the capacity, to supply the potable water required by workers during the construction and visitors and staff during the operation of the development and they will also supply water for firefighting. They also confirmed that the existing potable water supply to; the two large office blocks (Bellwin House and Glanford House); the Industrial Units 2-28 (even numbers) on First Avenue; and the Park Ings Farm store building on Stather Road, which are within the site Order Limits and will be demolished, can be used for the project. Additionally, the Applicant confirmed that AW is reviewing the provision of water required for construction through either potable water via the potable water network or an alternative (raw water) by tanker, or other methods. AW and the Applicant have agreed a proposed requirement to insert into the DCO and AW confirmed, in an email sent via their representative Jacobs UK Ltd to the Secretary of State on 20 October 2023, that provided that the proposed requirement is incorporated into the DCO (as made) then AW is satisfied that this matter is now resolved. The requirement states that no part of the Energy Park Works may commence, save for the preliminary works, until a Water Resources Assessment is submitted to and agreed with Anglian Water following consultation with the Environment Agency on matters relating to their function and subsequently approved by the relevant planning authority. The Water Resources Assessment will include a scheme to deal with the supply of water during both construction and operation of the authorised development including final process design, maximum daily demand, and water efficiency measures.

The Secretary of State's Conclusion

4.48. The Secretary of State notes that the Applicant and AW have now reached agreement regarding the supply of water for the construction and operation of the development and agrees that the proposed requirement, agreed by both parties, should be incorporated into the DCO. The requirement would ensure that the water supply strategy for the Project is established and secured prior to commencement of the Energy Park works, therefore, if the water supply cannot be secured before the five year expiration date by which the

authorised development must be commenced by, in accordance with Requirement 2 of the Order, the Applicant cannot commence construction. The Secretary of State, therefore, considers that with regard to flood risk, hydrology and water resources, no matters remain which would weigh for or against making the Order.

Major Accidents and Hazards

4.49. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of this issue.

4.50. In its relevant representation [RR-069] Jotun Paints (Europe) Limited (JPEL), the operator of an upper tier Control of Major Accident Hazards (COMAH) site just to the north of the Proposed Development, raised concerns including the proximity of parts of the Proposed Development it considered hazardous and access to its facility for emergency services during the construction of the Proposed Development. In its response [REP2-033] the Applicant stated that the HSE's PEIR consultation response noted that where people will be potentially located in the Proposed Development would not be within the consultation zones of any major accident hazard site or major accident pipeline [ER 5.10.24]. In its response [REP1-012] the Applicant said that it would be engaging with JPEL with the aim of establishing a Statement of Common Ground (SoCG). By the close of the examination the Applicant submitted a draft SoCG [REP9-028]. The Applicant considered that the only outstanding issue to be resolved was the details of construction logistics and confirmed that the draft SoCG was with the stakeholder and awaiting a signature for approval following approval of Heads of Terms agreement [REP10-006]. The ExA considered that the following statement in the draft SoCG [REP9-028*]: "The Applicant has agreed with Jotun Paints that the details of the Permanent Easement required will be addressed and signed off as part of a Heads of Term document to deal with the logistics of construction"* is unclear with regard to the safety of JPEL's operations as an upper tier COMAH site. The ExA were, therefore, minded to recommend an additional requirement to be added to the DCO, as set out below:

> *'No part of the authorised development may commence until arrangements for emergency access to and egress from the Jotun Paints (Europe) Limited upper tier COMAH site have been submitted to and approved by the relevant planning authority following consultation with Jotun Paints (Europe) Limited and the HSE. Any work in relation to the authorised development shall be carried out in accordance with the approved arrangements.'*

4.51. In the first consultation letter the Applicant, JPEL, HSE and NLC were invited to comment on the ExA's recommended requirement. In its response dated 20 October 2023, the Applicant considered that the requirement is not necessary due to the number of existing requirements and articles that address and/or govern this issue. The Applicant referred to the Code of Construction Practice (CoCP) (AS-028) in which the Applicant committed to consulting and working with JPEL to assess any concerns around emergency evacuation plans and emergency service access to the JPEL site and to relevant Articles in the DCO:

- Under Article 11 (which governs street works) the Applicant would have powers to carry out certain works in the street (as listed in Article 12(1)) but this would not provide powers to stop up any accesses and the exercise of these powers is subject to first obtaining the consent of the street authority (see Article 12(3)).

- Article 14 of the draft DCO includes powers for the Applicant to permanently stop up those streets listed in column (2) of Schedule 4 of the draft DCO, however, the streets surrounding the Jotun Paints site are not included within this list and as such the Applicant does not have the powers to permanently stop up the streets within that area.
- Pursuant to Article 15 of the draft DCO, the Applicant would have powers to temporarily stop up any street within the Order Limits for the purposes of carrying out and maintaining the authorised development, however, exercising this power is subject to receipt of consent by the highway authority.

4.52. These comments were echoed in the response provided by NLC on 22 October 2023. In its response dated 20 October 2023 HSE consider that coordination between the Applicant, JPEL and NLC is important, however, HSE does not consider that it has a role in the development, delivery, or review of a safety plan. JPEL also responded on 20 October 2023 confirming that it is satisfied that it has now reached agreement with the Applicant to ensure that the Applicant will maintain continued safe access and egress to the JPEL site while carrying out the development.

The Secretary of State's Conclusion

4.53. The ExA's purpose for the additional requirement was to resolve the issue raised by JPEL in relation to emergency access to JPEL's site, however, none of the parties consulted consider the ExA's recommended requirement to be a necessity, including NLC and HSE. JPEL considers that its agreement with the Applicant will secure safe access and egress to the JPEL site. The Secretary of State, therefore, considers that this issue has been resolved and does not consider it necessary to include the recommended requirement.

Noise and Vibration

4.54. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of this issue.

4.55. Noise and vibration was raised as an issue in 16 RRs [ER 5.11.42] with existing noise complaints from the Flixborough Industrial Estate affecting Amcotts and predicted operational noise levels in relation to thresholds and background levels being raised in representations from local residents and Burton upon Stather, Flixborough and Amcotts Parish Councils [ER 5.11.44]. The ExA recommended the following new requirement to be included in the DCO:

> *'The rating level (LAr) of noise from the operation of the authorised development shall not exceed: 45 dB LAr for any fifteen-minute period between 2300 and 0700; and 50 dB LAr for any one-hour period between 0700 and 2300, determined one metre free field external to any window or door of any existing permanent residential premises using the definitions and methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019.'.*

4.56. The ExA considered that this would secure the necessary mitigation so that the Proposed Development would comply with 2011 NPS EN-1 paragraph 5.11.9 to the extent that significant adverse impacts on health and quality of life from noise would be avoided, and

other adverse impacts on health and quality of life from noise would be mitigated and minimised.

4.57. The Applicant proposed the following new requirement in its final draft DCO Revision 8 [REP10-004]*:*

> *"22. The rating level of noise from the operation of the authorised development shall not exceed 45 dB LAr for any fifteen-minute period between 23:00 and 07:00, and 55 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door of Charmaine in Amcotts, and 45 dB LAr for any fifteen-minute period between 23:00 and 07:00, and 50 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door at any other existing permanent residential premises considered in the noise chapter of the environmental statement using the methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019."* [ER 5.11.60].

4.58. The ExA noted that the Applicant's proposed requirement sets a higher limit at the dwelling referred to as Charmaine, Amcotts during the daytime, compared with other dwellings but the ExA considered that the Applicant had submitted no evidence to justify the reduced level of protection for this dwelling and that the limit should apply to all existing permanent residential premises [ER 5.11.77]. The ExA recognised that their proposed requirement sets a daytime noise limit that is 4dB below the predicted level at Charmaine, Amcotts provided by the Applicant [REP8-006], however, they consider this to be reasonable because as the design proceeds and operational plans are developed, it would be reasonable to expect this prediction to reduce, as the Applicant would have ample opportunity to include measures that would reduce the predicted 'worst case' noise levels so far presented to below the set limits [ER 5.11.78]. The ExA also considered that should NLC agree that there is an existing noise nuisance and take enforcement action, it would be reasonable to conclude that the background noise levels in Amcotts would become lower between now and when the Proposed Development would start operation [ER 5.11.62].

4.59. The Applicant was asked to comment on the suitability of the ExA's proposed requirement in the first consultation letter. The Applicant considered that the proposed requirement sets limits in terms of a rating level in accordance with BS 4142, so that the limits are potentially more stringent (by a correction of up to 18 dB to account for) than the guideline values in BS 8233, therefore, the Applicant suggests that the daytime limit is set in terms of an average (LAeq) noise level rather than a rating noise level (LAr).

4.60. The Applicant argued that because the 53 dB baseline sound level at Charmaine, Amcotts is already above 50 dB, Charmaine and receptors close to it in Amcotts can be described as experiencing a noisier environment, which suggests that a criterion of 55 dB, LAeq based on the guidance in BS 8233 would be more appropriate and suggested amendments to the ExA's proposed requirement that differentiate between the properties in proximity to Charmaine and the rest of the residential properties, similar to their proposed requirement at REP10-004.

The Secretary of State's Conclusion

4.61. The Secretary of State agrees with the Applicant's assertion that an average (LAeq) noise level rather than a rating noise level (LAr) is more appropriate for the daytime limit for the reasons suggested by the Applicant. He does not, however, agree that Charmaine and the receptors close to it in Amcotts should be differentiated from other existing permanent residential properties and afforded a reduced level of protection purely on the basis that the baseline sound level in the Applicant's noise assessment exceeded 50 dB and agrees with the ExA that it is reasonable to expect this predicted 'worst case' noise level to reduce as design proceeds and operational plans are developed. The Secretary of State considers that the ExA's proposed requirement would secure the necessary mitigation required, with the added amendment to the daytime noise level as requested by the Applicant, and concludes that the following requirement should be included in the DCO*:*

> *'The rating level (LAr) of noise from the operation of the authorised development shall not exceed: 45 dB LAr for any fifteen-minute period between 2300 and 0700; and 50 dB LAeq for any one-hour period between 0700 and 2300 determined one metre free field external to any window or door of any existing permanent residential premises using the definitions and methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019.'*.

<u>Waste</u>

4.62. With regard to waste management, the ExA saw no reason to disagree with the Applicant's overall conclusion that waste management during construction, operation and decommissioning of the Proposed Development would be sufficiently mitigated to avoid any likely significant adverse effects. The ExA agreed that adverse effects caused by waste during construction would be mitigated by the waste management plan which is included as Appendix G of the Code of Construction Practice (CoCP) [REP9-018] which is certified under article 46 of the Draft Development Consent Order (dDCO) revision 8 [REP10-004], and its use is secured through the environmental management requirement 4 of the dDCO revision 8 [REP10-004] [ER 5.14.78]. The ExA also agreed that adverse effects caused by waste produced during decommissioning would be mitigated by a combination of the environmental permit surrender plan and the decommissioning plan secured by requirement 16 of the dDCO revision 8 (which is now requirement 17) [REP10-004] [ER 5.14.79].

4.63. The ExA did, however, express concern as to whether the use of 125 ktpa of bottom ash and 5 ktpa of hazardous flue gas residues in the concrete block making facility (CBMF), to avoid it needing to be disposed of as waste, is secured by the corresponding Requirement 19 [REP10-004] (ER 5.14.80].

4.64. In the first consultation letter, the Secretary of State requested further information on how the Concrete Block Making Facility (CBMF) and its operations would be secured by Requirement 19. In their response dated 20 October 2023, the Applicant states that Requirement 19(2) provides that once the ERF (Work No.1) has been commissioned, the CCUS (Work No. 1B) must then also be constructed and commissioned within 6 months. Then the CBMF (Work No.2(b)) must also be constructed and commissioned within 12 months of the CCUS being commissioned. The Applicant acknowledged that whilst it is possible to extend the timescales for the provision of the CCUS and CBMF, it

would not be in the interests of the Applicant to do this as the CBMF removes the need to source an off-taker for the ash residues: it facilitates the utilisation of CO2 captured in the absence of CO2 transportation pipelines and produces an additional revenue stream for the facility in the form of the low-carbon concrete products produced.

4.65. In response to a request made in the second consultation letter to confirm that the use of hazardous flue gas residues and bottom ash in the CBMF is a process that requires an Environmental Permit and if there is any reason why a permit would not be granted at this time, EA confirmed that there is no reason to suppose that an Environmental Permit for the use of waste flue gas residues and bottom ash for block manufacture will not be granted, provided the application meets the requirements of the permitting regime.

4.66. With regard to the issue of EfW treatment capacity and RDF supply availability, the Applicant [REP6-032] and UKWIN [REP6-043] submitted forecasts of EfW treatment capacity and RDF supply availability in response to the second round of written questions [PD-012] [ER 5.14.82]. Both considered that: government targets on waste reduction and recycling would be met; other uses of RDF had been included; currently operational and EfW facilities that were under construction were included in their EfW capacity forecasts; consented EfW facilities that had not yet begun construction were excluded from their forecasts; and there would be no widespread closure of EfW facilities caused by a regulatory or policy requirement to fit CCUS plant [ER 5.14.66].

4.67. The ExA saw no reason to disagree with the Applicant's forecast, which they consider provides a good understanding of the likely availability of EfW treatment capacity and RDF supply availability for England and Yorkshire & Humber and East Midlands [ER 5.14.91]. The ExA considers that the Applicant's forecast predicts an over capacity in England (239 ktpa) and a capacity gap for Yorkshire & Humber and East Midlands (475 ktpa) in 2026, which the Applicant considers to be the first year of operation. That would be less than the 760 ktpa capacity of the ERF component of the Proposed Development, hence a forecast over-capacity would be caused in that area [ER 5.14.96]. The ExA disagreed with the Applicant [REP8-020] that regulatory controls can be relied upon to deliver conformance with the waste hierarchy [ER.5.14.104]. The ExA considered that the Proposed Development is of a scale that would prejudice the achievement of local or national waste management targets in England and that the Applicant has not demonstrated conformity with the waste hierarchy, as expected in 2011 NPS EN-3 paragraph 2.5.69, or that the availability of waste as fuel relative to the capacity of plants for processing is consistent with paragraph 2.5.70 [ER 5.14.100]. The ExA therefore, ascribes very substantial weight to matters relating to the issue against the making of the Order [ER 5.14.111].

4.68. The Secretary of State asked the Applicant to provide further information on how the Proposed Development complies with the "waste hierarchy" as defined in the Waste (England and Wales) Regulations 2011 in a letter dated 22 September 2023. The Applicant responded by providing a list of all of the examination documents that referred to this issue and stated that it was of the view that it had provided the information that it is possible to provide on the subject.

4.69. The Secretary of State asked a series of focused questions around the incineration capacity and the waste hierarchy with reference to the Applicant's examination submissions in the second consultation letter. The Applicant provided a revised assessment that considered nine different scenarios for future capacity need and takes

account of the 2023 Tolvik Report and the consenting of the Boston Alternative Energy Facility. The Applicant stated that its previous forecast [REP6-032] represented its conservative base case, with government recycling targets being met, and includes all existing and under construction EfW facilities. The new revised assessment includes a 'median' scenario, which the Applicant considers to be its best view of the likely outcome. The median scenario assumes lower 'median' recycling rates of 55% household recycling by 2035 and 60% by 2042, and 77.5% commercial and industrial waste recycling by 2042 and includes only existing and under-construction capacity which the Applicant assessed as being of 'high' or 'medium' CCS potential, with the addition of consented projects. This scenario predicts a long-term capacity gap of around 1400ktpa up to 2042. The Applicant argued that there is uncertainty around both the residual waste arising and the EfW treatment capacity. The residual waste arising is dependent on the total amount of waste arising and the rate of recycling, which in turn depends on economic activity and population growth and the success of government policies designed to increase recycling. The Applicant stated that recycling rates for local authority collected waste have plateaued in the range 41-43% over the last five years and it considers that it will be extremely challenging for the government to meet its recycling targets. The EfW treatment capacity is dependent on the remaining life and availability of existing capacity. The Applicant noted that where projects are being actively developed, they will be competing with other projects for supply of residual waste or RDF, and they are unlikely to be able to secure finance until they have secured adequate supply, therefore, natural selection by the market will ensure only better projects move forward.

4.70. The Applicant also noted that in 2023 the government announced that EfW facilities will be included in the UK Emissions Trading Scheme from 2027 and that decarbonisation readiness requirements will apply to new EfW facilities entering operation from July 2024 and the Applicant remained of the view that Government expects the EfW sector to decarbonise as part of the wider Net Zero policy [REP6-032]. The Applicant has previously discussed its view that not all existing facilities will be able to fit CCS, and that some will be better placed than others to capture CO2 more cost effectively. When considering this argument the ExA stated that no evidence was presented by the Applicant or any other IP that such a policy was in place, when it would be in place or that it would apply to EfW facilities that were already in operation, therefore, the ExA concluded that it did not consider it necessary to adjust the Applicant's forecasts of EfW treatment capacity on the basis of carbon capture readiness [ER 5.14.90]. The Secretary of State does not consider that the facilities included in the assessment should be limited according to their CCS potential as there is no policy which suggests that non-conforming EfW plants would be required to cease operating prior to their planned operational life.

4.71. In January 2024 UKWIN submitted a representation as a result of the Secretary of State's second consultation letter. This representation included UKWIN's consideration of the 2024 NPSs; raised concerns around trends in the 2023 Tolvik Report, the impact of recently consented projects, including Boston Alternative Energy Facility and increases in permitted capacity at existing facilities; and commented on and provided a copy of a Technical Note produced by Beyond Waste, which was submitted on 15 October 2023 in relation to the Medworth Energy from Waste Combined Heat and Power Facility (consented on 20 February 2024). The Beyond Waste Note assesses the availability of waste that falls under the EWC code 19 12 12 in Kent. UKWIN then submitted a further representation on 18 January 2024 in relation to the Applicant's letter of 16 January 2024 responding to the second consultation (detailed in paras 4.55-4.57). In this letter UKWIN

argued how and why they consider the revised assessment of EfW treatment capacity and RDF supply availability and the scenarios presented by the Applicant are inaccurate. The Applicant responded to UKWIN's letters on 9 February 2024 with their own consideration of the 2024 NPSs. They also provided their own report that addresses the Beyond Waste Technical Note and provides their own assessment of the availability of waste under the EWC code 19 12 12, whilst confirming that only a minor proportion of the fuel received at the Proposed Development will be classified as 19 12 12 and arguing that conclusions drawn from that note have no relevance to the Proposed Development in North Lincolnshire and should be disregarded as the note centres on waste generation and activity in Kent, over 200 miles away from the Proposed Development. The Secretary of State agrees that the Beyond Waste Note has no direct relevance to the Proposed Development and should not be taken into consideration. UKWIN provided a further response on 27 February 2024, refuting the arguments put forward by the Applicant in their letter of 9 February 2024. In an email dated 13 March 2024 the Applicant confirmed that they would be providing no further response to UKWIN's letter of 27 February 2024.

4.72. On 30 December 2024 Defra published its *Residual Waste Infrastructure Capacity Note*. The evidence presented in the note identifies that there are certain areas in England, in particular the East Midlands and the East of England, where alternative treatment options to landfill for municipal residual wastes is currently required. The location of the Proposed Development is close to the border between the Yorkshire and Humber and the East Midlands regions, therefore, the 'local' catchment area defined by the Applicant in REP3-040 includes both regions [REP3-040]. The Applicant also considers that it would be appropriate for waste to be sourced from further afield where waste is arriving by rail or river [REP3-040]. Section 4.3 of Defra's note states that while regard must be given to the proximity principle, which encourages residual waste to be recovered in one of the nearest appropriate facilities, this must not be over-interpreted. Defra's note does not require using the absolute closest facility to the exclusion of all other considerations. Accepting waste from, or sending waste to, another council, city, or region in many cases may be the best economic and environmental solution and be the only outcome achievable at a given time that is the most consistent with the proximity principle.

4.73. According to Defra's note there is currently a capacity gap in the East Midlands region of around 1,550,000 tonnes between residual municipal solid waste arising and operational energy recovery capacity, however it has the highest amount of consented but not yet under construction energy recovery capacity of all of the regions. While Defra state that this consented capacity is significant, it does not assume that all consented capacity will be built in addition to existing capacity. Defra consider that if a consented development cannot secure a long-term contract for feedstock supply, it is highly unlikely that it will receive financing and proceed to construction and some of this consented capacity may also constitute replacement capacity for existing facilities nearing end of life. Defra, therefore, concludes that consented capacity should be viewed as a pool of potential projects that may or may not be constructed in line with local residual waste management needs. There is also currently a capacity gap in the East of England region of approximately 1,250,000 tonnes between residual municipal solid waste arising and operational energy recovery capacity and even with consented capacity being taken into account there is still a capacity gap of around 250,000 tonnes.

4.74. Whilst the forecasts in Defra's note only concern municipal residual waste capacity, Defra has also published statistics estimating the total amount of residual waste (including non-municipal residual waste but excluding major mineral wastes), which indicate that there

is also likely a need for alternative treatment options to landfill for non-municipal residual wastes. The note recognises that additional energy recovery facilities may be required to support the near elimination of biodegradable waste being disposed in landfill. Defra notes this could result in development of residual waste treatment capacity in excess of the long-term residual waste reduction target in 2042, as further wastes are prevented and recycling improves to meet this target, and deliver a circular economy, but considers it is likely that the oldest, least efficient facilities or those facilities that are no longer viable will be decommissioned.

4.75. Defra's note states that it will only support those energy recovery developments that are needed that offer the best efficiency and are future proofed towards supporting its net zero objectives, which means that they must be able to demonstrate that making use of the heat they produce is viable and that they can be built carbon capture ready, in accordance with the government's 'decarbonisation readiness' requirements once they come into force. The Proposed Development includes both private wire and district heating networks and a carbon capture utilisation and storage facility.

4.76. The Secretary of State received 10 responses to the fourth consultation letter. Burton-upon-Stather Parish Council, Amcotts Parish Council and two individuals consider that Defra's note indicates that there is sufficient EfW treatment capacity in Yorkshire and Humber and on a national scale and that Defra's move to a circular economy and implementation of recycling schemes mean that there is no requirement for further incineration capacity. North Lincolnshire Council confirmed that it had no comments and three other responses received raised objections to the Proposed Development on grounds of residential amenity and impact on local businesses, however, these responses are considered to be outside the scope of the fourth consultation letter.

4.77. In its response to the fourth consultation letter, the Applicant considers that the Proposed Development is well placed to meet the residual waste management need in the East Midlands and East of England need as the 100-mile waste catchment area encompasses almost all of the East Midlands and a good proportion of the East of England region. Whilst Defra allows for a maximum of 10% of residual waste to continue to be landfilled, 2% of which is estimated to be non-combustible the Applicant considers that the remaining 8% should be treated higher up the waste hierarchy, i.e. through energy recovery. The Applicant also notes that 10% figure does not include any of the current volume of non-municipal residual waste currently going to landfill. Applicant estimates that this could add a further 3.2m tonnes per year to combustible but non-recyclable waste, of which 1.6m is within 100 miles of the Project.

4.78. In order to ensure the proximity principle, the Applicant proposes an amendment to requirement 16 (Fuel type) of the dDCO to commit to securing a minimum of municipal and non-municipal residual waste from the East Midlands (not less than 350,000 tonnes or 50% of the waste processed at the authorised development per operational year (whichever is the lower of the two)). The amendment also requires the Applicant to provide an annual "waste catchment report" to the relevant planning authority, which will identify the total tonnage of refuse derived fuel received from the waste area processed at the authorised development for the preceding operational year. The Applicant also proposes an amendment to requirement 24 (PRF) of the dDCO to ensure that the Plastic Recycling Facility (PRF) will be delivered at the same time as the ERF to ensure the Proposed Development delivers an improvement to the recycling rate of the residual waste supply offered.

4.79. In addition, the Applicant proposes an amendment to requirement 18 (Combined heat and power) of the dDCO committing to construct the 6km "Northern Spur" of the District Heat Network (DHN) ahead of the commissioning of the ERF. This is a result of the Applicant establishing comprehensive support for the District Heat Network (DHN) as an integrated element of the Project, including 17 customers with heat offtake Heads of Terms negotiated subject to DCO consent, which were included in an application for the Green Heat Network Fund (GHNF). In an email between Triplepoint and the Applicant (Annex 8 of the Applicant's submission) it states that whilst the round 8 GHNF application was unsuccessful, the report noted that the Applicant would need to secure a guarantor with sufficient financial standing to guarantee any grant provided when assessing the financial viability of the application. Triplepoint understand that the positive outcome of the DCO is key to securing the remaining funding and a suitable guarantor. The Secretary of State has decided to include this amendment in the DCO.

4.80. Whilst requirement 19 (Commissioning) of the dDCO [REP10-004] requires the CCUS to be constructed and commissioned within 6 months of commissioning of the ERF, the Applicant has also submitted a report by Fitchner Consulting Engineers Limited, which concludes that the Proposed Development has sufficient space to deliver 100% carbon capture in the future (Annex 7 of the Applicant's submission).

4.81. In its response to the fourth consultation letter, UKWIN considers that Defra's note supports its view that consenting the North Lincolnshire plant is likely to result in over-capacity of EfW waste treatment at both a local and national level. UKWIN notes that Defra's forecasts do not take into account non-incineration demand for residual waste and estimates that approximately 7 million tonnes of residual waste per annum will be required for waste-derived Sustainable Aviation Fuel (SAF) production facilities, plastic-derived Recycled Carbon Fuel (RCF) to be used as transport fuel under the Renewable Transport Fuel Obligation and cement and lime kilns (which use waste as an alternative to conventional fossil fuels). Of these, UKWIN estimates that 565,000 tpa of non-major mineral waste is treated in cement and lime kilns in the East Midlands region and 500,000 tpa of waste will be treated at the SAF Altalto Velocys plant in Immingham, which is located within the Yorkshire & The Humber Region and is due to enter full operation in 2028. UKWIN disagrees with the Applicant's carbon capture claims and notes that the Applicant confirmed that the Proposed Development would not be a CHP plant at the outset in REP9-009. UKWIN argues that simply providing a viable CHP scheme and comprehensive CCS scheme would be inadequate to overcome the lack of need for the proposed waste management capacity. UKWIN issued a further letter on 28 February 2025 commenting on the Applicant's submission, which the Secretary of State has taken into consideration.

The Secretary of State's Consideration

Waste management

4.82. The Secretary of State agrees with the ExA that waste management during construction, operation and decommissioning of the Proposed Development would be sufficiently mitigated to avoid any likely significant adverse effects. Whilst the Secretary of State acknowledges that the timescales laid out in Requirement 19 could be extended, this would be subject to the relevant planning authority agreeing that the alternative timescales do not give rise to any new or materially different environmental effects from those originally assessed. The Secretary of State also accepts the Applicant's assertion

that it would not be in their best interest to extend the timescale for the construction and commissioning of the CCUS and CBMF. As such, the Secretary of State considers that Requirement 19 provides sufficient security.

Recycling targets

4.83. In terms of recycling targets, 2011 NPS EN-3 para. 2.5.70 states that where there are concerns in terms of a possible conflict with waste management targets, evidence should be provided to the Secretary of State by the applicant as to why this is not the case or why a deviation from the relevant waste strategy or plan is nonetheless appropriate and in accordance with the waste hierarchy. The Applicant has supplied such evidence in response to the Secretary of State's consultations in the form of a revised assessment and has argued that their 'median' scenario is the most appropriate as they consider it unlikely that the Government will reach its recycling targets to increase household recycling rates to 65% household waste recycling by 2035, 70% by 2042 and 80% Commercial & Industrial waste recycling by 2042.

4.84. In response to this, the Secretary of State considers that the success (or otherwise) of the Government's recycling targets is dependent on subsequent accompanying policy or guidance and the appetite of local authorities to achieve these targets, therefore, without any further evidence to indicate that the Applicant's view is possible, a positive outcome is just as probable as a negative outcome. The Secretary of State agrees with the Applicant's modelling assumption in its 'conservative', which is that the Government achieves its recycling targets by 2035 and 2042.

RDF availability and EfW treatment capacity

Modelling and Forecast

4.85. The Secretary of State is of the opinion that that there is great uncertainty around assessing waste availability and consequently EfW treatment capacity, particularly in the absence of specific EfW policy and guidance on the methodology for modelling and forecasting. Defra's recently published *Residual Waste Infrastructure Capacity Note* indicates that there is currently insufficient residual waste treatment capacity in the East Midlands and East of England regions, which are either wholly or partially within the 'local' 100-mile catchment of the Proposed Development as defined by the Applicant. The Secretary of State agrees with the ExA that the Applicant's 'conservative' forecast uses the most appropriate modelling assumptions, which are that the Government achieves its recycling targets by 2035 and 2042 and that all existing and under-construction EfW facilities remain in operation until the end of their expected operating life. The Secretary of State notes that the modelling assumptions used by Defra in its note are similar to those used in the Applicant's 'conservative' forecast. Footnote 36 to EN-1 2024 para.3.2.3 reinforces the position regarding the waste hierarchy contained in 2011 NPS EN-1 as it states that the primary function of Energy from Waste plants is to treat waste and planning decisions will be made on the demand for waste energy infrastructure. Government policy on the treatment of waste is led by Defra, therefore, the Secretary of State considers that the forecasts of residual waste infrastructure capacity provided by Defra take precedence over any other forecasts considered so far in relation to this Application. Based on Defra's forecast, the Secretary of State, considers that the availability of waste as fuel relative to the capacity of plants for processing is consistent with 2011 NPS EN-3 paragraph 2.5.70.

4.86. In relation to UKWIN's submissions on EfW treatment capacity, the Secretary of State has taken into consideration the points made by UKWIN with regard to projections on future capacity as a result of consented developments and increases in permitted capacity at existing facilities. The Secretary of State considers that the only new information provided by UKWIN is the *Beyond Waste Technical Note*, which the Secretary of State has discounted as it has no direct relevance to the Proposed Development. With regard to UKWIN's submission concerning Defra's note, the Secretary of State accepts that Defra's forecasts do not take into account non-incineration demand for residual waste and that this may have an impact on waste availability and treatment capacity on a national scale. However, with regard to the Proposed Development, the Secretary of State notes that no acknowledgement has been made of the insufficient residual waste treatment capacity in the East Midlands and East of England regions, which are wholly and partially within the local catchment of the Proposed Development or the non-municipal residual waste currently going to landfill. Even taking into account the 565,000 tpa of waste estimated to be used in cement and lime kilns in the East Midlands and the 500,000 tpa of waste required by the SAF Altalto Velocys plant in Yorkshire and Humber, there would still be just under around 500,000 tonnes between residual municipal solid waste arising and operational energy recovery capacity in the East Midlands region.

Market forces

4.87. The Secretary of State notes the Applicant's argument that even if there is overcapacity, market forces will lead to the closure of smaller, older and less efficient EfW facilities, particularly where these are not able to capture carbon (although as mentioned earlier the Secretary of State has already discounted the argument that assessments should consider existing capacity projects according to their CCS potential). The specific elements of this project that relate to its sustainability and efficiencies including its CCUS readiness, the PRF, the CBMF facility to treat residual waste and the alternative modes of transport to and from the site (including the reinstatement of the railway line and the use of the wharf on the River Trent) which may make it more appealing to prospective suppliers of waste than other in development projects that it will be competing with. The Secretary of State also notes that should the project be unsuccessful in securing an adequate waste supply, it will not receive the necessary finance for its construction. Defra's note supports these assertions as it states that consented development that cannot secure a long-term contract for feedstock supply is highly unlikely to receive financing and proceed to construction and some of this consented capacity may also constitute replacement capacity for existing facilities nearing end of life.

4.88. The Secretary of State sees some merit in the arguments put forward by the Applicant regarding market forces.

Deviation from the waste strategy or plan

4.89. In relation to the Applicant's arguments on deviations from the relevant waste strategy or plan, the Secretary of State notes in REP6-032 that the Applicant considers that a system which is operating at under capacity for Energy from Waste (EfW) will result in additional waste in landfill and the optimum position is therefore to have a slight overcapacity in EfW facilities to ensure that there is no residual waste. In their consultation response dated January 2024, the Applicant argues that planned and permitted capacity may not be delivered for various reasons, including altered developer priorities or an inability to

find funding or to secure fuel and as a result, planning for 'just enough' capacity to meet the need to divert residual waste from landfill is almost certain to result in insufficient capacity being available in practice. Therefore, they argue that capacity to provide some contingency or resilience in the system will be required if as little waste as possible is to be landfilled. Defra's note includes similar arguments as its statistics estimating the total amount of residual waste (excluding major mineral wastes) indicate that there is also likely a need for alternative treatment options to landfill for non-municipal residual wastes, which may result in development of residual waste treatment capacity over the coming years in excess of infrastructure requirements for the 2042 residual waste reduction target. However, it goes on to state that as further wastes are prevented and recycling improves to meet this target, it is likely that the oldest, least efficient facilities or those facilities that are no longer viable will be decommissioned. The Secretary of State accepts that it is unlikely that all the planned and permitted EfW developments will come forward and agrees that planning for 'just enough' capacity could result in less waste being diverted from landfill. Whilst the Secretary of State does not consider there to be any conflict with the relevant waste management strategies, for the avoidance of doubt he considers that ensuring the 'contingency or resilience' described by the applicant would have represented an appropriate deviation from the relevant waste strategy or plan as it aims to ensure compliance with the waste hierarchy by diverting as much waste from landfill as possible.

4.90. 2024 EN-1 para.3.2.3 states that it is not the role of the planning system to deliver specific amounts or limit any form of infrastructure covered by this NPS, with the exception of new coal or large-scale oil-fired electricity generation. Footnote 36 then states that a further exception to this is Energy from Waste plants where the primary function is to treat waste and planning decisions will be made on the demand for waste energy infrastructure. The Secretary of State considers that in this case there is no certainty that there will be overcapacity as; there is great uncertainty in forecasting waste availability and consequently EfW treatment capacity; market forces may work in the Applicant's favour; and the Applicant's arguments around 'contingency or resilience' would represent an appropriate deviation from the relevant waste strategy or plan in the event that a conflict arose.

Waste Hierarchy

4.91. 2024 EN-3 paragraph 2.7.104 states that the Secretary of State should consider whether a requirement, including monitoring, is appropriate to ensure compliance with the waste hierarchy. The Secretary of State considers that the Applicant's amendments to requirements 16 and 24 will ensure that the proximity principle is adhered to with at least 350,000 tonnes or 50% of the waste being sourced from within the local catchment area and the PRF will be fully operational at the same time as the ERF, maximising the recycling potential of the Proposed Development.

The Secretary of State's Conclusion

4.92. The Secretary of State considers that Defra's note provides the most appropriate forecasts for residual waste availability and EfW capacity and concludes that there is currently a capacity gap between residual municipal solid waste arising and operational energy recovery capacity within the local catchment of the Proposed Development. He acknowledges the uncertainty surrounding assessments of waste availability and EfW treatment capacity and considers that market forces and the aforementioned

amendments to requirements 16 and 24 should go some way towards ensuring compliance with the waste hierarchy. The amendment to requirement 18 also provides further assurance for the DHN. He also considers that the applicant's arguments around ensuring 'contingency and resilience' have some merit as they aim to ensure that more waste is diverted from landfill. He, therefore, ascribes this issue moderate weight for the making of the Order.

5. Habitats Regulations Assessment

5.1. The Secretary of State's has undertaken a Habitats Regulations Assessment ("HRA") and has carefully considered the information presented during the Examination including the Report to Inform Habitats Regulations Assessment [APP-043] and associated updates as submitted by the Applicant, the Report on the Implications for European Sites ("RIES") [PD-014] as produced by the ExA, the ES, representations made by IPs, and the ExA's Report.

5.2. The Secretary of State considers that the Proposed Development has the potential to have a Likely Significant Effect ("LSE") on five protected sites when considered alone and in-combination with other plans or projects.

5.3. The Secretary of State has undertaken an Appropriate Assessment in respect of the conservation objectives of the sites to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an Adverse Effect on the Integrity ("AEoI") of the identified protected sites. Having considered all the information available to him and the mitigation measures secured through the DCO, and making the ExA's suggested amendments to the DCO regarding the location of the bunker hall, the Secretary of State concludes in line with the recommendation of the ExA and advice of NE, that the Proposed Development will not have an AEoI on any protected site, beyond all reasonable scientific doubt.

6. Compulsory Acquisition and Temporary Possession

6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of CA (Compulsory Acquisition) and TP (Temporary Possession) of land and rights which it had not been able to acquire by voluntary agreement. The Applicant is seeking these powers to:

- acquire land permanently within the Order limits;
- temporarily possess land within the Order limits;
- acquire rights over some land within the Order limits;
- extinguish rights over some of the land within the Order limits;
- and temporarily suspend rights over some of the land within the Order limits in order to construct, operate and maintain the Proposed Development [ER 8.2.1 et seq.]

6.2. The full extent of the land which would be subject to powers of Compulsory Acquisition (CA) and required in order to enable the Applicant to construct the Proposed Development, as described in the Statement of Reasons (SoR) [REP-011], is shown on the Land Plans [REP2-014], and the Works Plans [REP5-013 to 015]. It is further described in the Book of Reference (BoR) [AS-020], the Explanatory Memorandum (EM) [REP9-007] and in the documents comprising the Environmental Statement (ES) [ER 8.1.2].

6.3. The application for the Development Consent Order (DCO) seeks:

- To compulsorily acquire interests and rights in land and to use land temporarily, to construct, operate and maintain the new Energy Recovery Facility (ERF).
- Additional land to facilitate the associated development including habitat creation, together with hard and soft landscaping works (Work No 12) flood defences and bunds (Work No 13).
- The permanent acquisition of plots (or part of plots) of the railway reinstatement land (Work Nos 3 and 4) for the provision and ongoing operation of the railway during the operation of the Proposed Development.
- Land to facilitate the northern and southern District Heat and Private Wire Networks (DHPWN) (Work Nos 10 and 11). The Applicant has identified two options as alternatives for the eastern end of the Northern DHPWN. Option A is shown on sheet 10A of the Land Plans while Option B is detailed on sheet 10B [REP2-014]. The powers sought for both options include powers to enter land to a maximum width of 10 metres (m), create easements over this land for access and maintenance. The acquisition of rights are limited such that CA can only be exercised for one of these options, in the event the Secretary of State (SoS) does not select one option over the other.
- The permanent freehold acquisition for the provision of the new access road connecting the B1216 and Stather Road (Work No 5). [ER 8.2.1 – ER 8.2.6]

6.4. No Crown land is included in or affected by the Proposed Development [ER 8.2.12]. The Application Land contains three areas of special category land, shown on the Special Category Land Plans [APP-034]. All the affected plots are open space land which form parts of three areas of open space: Atkinson's Warren Open Space, Flixborough Open Space (south of the railway reinstatement) and Phoenix Parkway Open Space. The Applicant concludes that the special parliamentary procedures, as provided for in s131 and s132 of the PA2008, were not engaged or required for any of the special category land areas [ER 8.5.44 – 8.5.48].

6.5. 16 objections were submitted at the beginning of or during the Examination from Affected Parties (APs) regarding the request for the grant of CA and TP powers [listed at ER 8.5.49]. At the close of examination there remained four outstanding objections from AB Agri Limited, Cadent Gas Limited, Rajan Marwaha and North Lincolnshire Council [ER 8.5.63 – ER 8.5.66]. In the case of three of the remaining objections (AB Agri Limited, Rajan Marwaha and North Lincolnshire Council), while the ExA accepted that the CA and TP powers sought would result in some adverse impacts to the owner’s private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considered there is a compelling case in the public interest for the specific plots to be acquired compulsorily, or rights acquired, and was satisfied that this meets the tests in s122(3) of the 2008 Act. The ExA also concluded that the land to be taken is no more than is reasonably necessary and is proportionate, and that the interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate. The final position in respect of Cadent Gas Limited is set out in the relevant sections below.

Cadent Gas

6.6. Cadent Gas Limited ("Cadent Gas") maintained that the negotiations with the Applicant had not resolved all of the issues that they had identified, and an objection remained to the DCO, the Protective Provisions (PPs) offered, and consequently the exercise of powers of Compulsory Acquisition [ER 8.2.20]. The areas of most concern for Cadent Gas were the security in the event that damage is caused to the apparatus and the gas distribution network and the capping of the indemnity to £50 million. The ExA ultimately gave greater weight to the need to protect Cadent Gas's assets and ensure that security of these assets is maintained [ER 8.5.151] therefore, the ExA has adjusted the PPs in the DCO to reflect the request of Cadent to include their PPs in full.

6.7. In a letter dated 22 September 2023 the Secretary of State requested that the Applicant and Cadent Gas provide an update on the status of protective provision negotiations and both parties were also invited to comment on the necessity for the following section of the PPs within Cadent Gas's submission [REP9-057]:

> *"Protective works to buildings*
>
> *(1) The undertaker must exercise the powers conferred by article [##] (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed)"*

6.8. The Applicant provided a joint response on behalf of the two parties confirming that they had still not reached agreement on the two outstanding areas of concern and that they agree that it is for the Secretary of State to decide these matters. They also confirmed that they do not consider the wording regarding the protective works to buildings to be necessary as there is no associated article dealing with this issue in the DCO. The Secretary of State, therefore, agrees with the ExA that Cadent Gas's PPs should be included in full, with the exception of the wording related to protective works to buildings.

The Secretary of State's Conclusion

6.9. The ExA concluded that if the Secretary of State concludes that the case for the Project is made, compulsory acquisition powers were required for the purposes of carrying out the Proposed Development. It concluded that private losses to the APs would be outweighed by the public benefits from the Proposed Development and that there was a compelling case in the public interest to grant the compulsory acquisition powers and that the tests set out in sections 122(2) and 122(3) of the 2008 Act were satisfied. The Secretary of State agrees.

6.10. Cadent Gas Limited, Openreach Limited, Associated British Ports Limited, Anglian Water Services Ltd, Severn Trent Water Limited, Northern Powergrid (Yorkshire) Plc, National Highways Limited and Network Rail Infrastructure Limited are statutory undertakers. In each case the ExA concluded that the tests in sections 127 and 138 of the 2008 Act were satisfied. The Secretary of State agrees and has concluded that with the inclusion of the PPs contained in the Order the compulsory purchase powers will not cause serious detriment to the carrying on of the relevant undertaking.

6.11. The ExA concluded that special parliamentary procedures would not need to be invoked in respect of the plots of open space that are included within the Order Land and under

the terms of s131 and s132 of the PA2008 replacement land is not required [ER 8.6.4]. The Secretary of State agrees.

6.12. The Secretary of State is satisfied that there are no outstanding issues or reasons to refuse the Compulsory Acquisition and Temporary Possession powers as recommended by the ExA.

6.13. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State's Consideration of the Planning Balance and Conclusions

7.1. Where National Policy Statements have effect, section 104 of the Planning Act 2008 requires the Secretary of State to have regard to a range of policy considerations including the relevant National Policy Statements, local impact reports, prescribed matters and any other matters that the Secretary of State thinks are important and relevant to the decision.

7.2. The Secretary of State notes that the Proposed Development should be decided in accordance with the relevant (2011) NPSs EN-1, EN-3 and EN5, and that the designated 2024 NPSs are important and relevant considerations. Both the ExA and the Secretary of State have identified a range of important and relevant matters, namely energy and climate change legislation, and policy which postdate the publication of the energy NPSs in 2011, including the publication of the designated 2024 NPSs. The Secretary of State agrees that significant weight should be ascribed to these matters and that they represent important and relevant matters in the context of s104(2)(d) of the PA2008.

7.3. The Secretary of State acknowledges the ExA's recommendation that the harm identified clearly outweighs the benefits from the provision of energy that the Proposed Development would deliver [ER 7.2.16] and that the Proposed Development is not acceptable and the case for Development Consent is not made [ER 7.2.20].

7.4. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Air Quality – no weight for or against;
- Cultural Heritage – moderate adverse weight;
- Design and Layout – no weight for or against;
- Health – no weight for or against;
- Landscape and Visual Amenity – moderate adverse weight;
- Major Accidents and Hazards – no weight for or against;
- Noise and Vibration – no weight for or against;
- Socio-Economics – substantial positive weight;
- Traffic and Transport – little positive weight;

7.5. The Secretary of State disagrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Climate Change - the weighting ascribed by ExA: no weight for or against; and the weighting ascribed by Secretary of State: minor adverse weight;

- Ecology and Biodiversity - the weighting ascribed by ExA: substantial adverse weight; and the weighting ascribed by Secretary of State: moderate adverse weight ;
- Flood Risk and Hydrology – the weighting ascribed by ExA: significant adverse weight; and the weighting ascribed by Secretary of State: no weight for or against;
- Waste – the weighting ascribed by ExA: very substantial adverse weight; and the weighting ascribed by Secretary of State: moderate positive weight.

7.6. All NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed by the ExA as having not breached the 2011 NPS EN-1 and NPS EN-3 or those contained in the emerging draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.

7.7. The Secretary of State notes that the ExA considers in light of the power needed to sustain the associated development sought by the Applicant, the net figure of 64MW is more appropriate than the notional 95MW [ER 7.1.8]. The ExA gives substantial weight to the consideration of need in line with the advice in NPS EN-1 at paragraph 3.2.3, but recognises that this should be proportionate to the actual contribution to satisfying the need for a particular type of infrastructure [ER 7.1.9]. The Secretary of State agrees with the ExA's overall conclusion that the needs case carries substantial weight in favour of making the Order.

7.8. For the reasons given in this letter, the Secretary of State concludes that the substantial need for the electricity generated as laid out in both 2011 and 2024 NPS EN-1, the positive benefits to employment and the local economy and the capacity gap between waste available as fuel and EfW treatment capacity within the local catchment of the Proposed Development (to which he has assigned a moderate weighting for the making of the Order for the reasons outlined in paragraphs 4.82-4.92 above), outweigh the moderate adverse weight against the proposal associated with Ecology and Biodiversity, the moderate harm caused to heritage assets and landscape and the minor harm caused by the GHG emissions of the proposal. The Secretary of State notes that the ExA's assessment of the planning balance also included significant adverse weight against the proposal due to lack of a water supply. The Secretary of State considers that with the proposed mitigation, this issue has now been addressed and no longer has any bearing on the overall planning balance.

7.9. The Secretary of State concludes that development consent should be granted for the North Lincolnshire Green Energy Park. The Secretary of State believes that the national need for the Proposed Development as set out in the relevant NPSs outweighs the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.

7.10. In reaching this decision, the Secretary of State confirms that only evidence in the public domain was taken into account, including material from the examination and responses received to his consultations. Regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by North Lincolnshire Council, the 2011 NPSs, the designated 2024 NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning

Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

8. Other Matters

Equality Act 2010

8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[4]; pregnancy and maternity; religion and belief; and race.

8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.

8.4. The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

8.5. The Secretary of State notes the "general biodiversity objective" to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.

8.6. The Secretary of State is of the view that the ExA's Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

[4] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

9. Modifications to the draft Order

9.1. Following consideration of the draft Order provided by the ExA, the Secretary of **State has made the following modifications to the draft Order**:

a. Amendments to the definitions in Part 1 (Preliminary):
   i. Inclusion in Article 2 (Interpretation) of definition for, “the 1989 Act”, “traffic authority” and omission of the definition of “relevant highway authority”.
   ii. Amendment in Article 2 (Interpretation) to definition of “authorised development”, “commence”, “requirements” and “street authority”.
   iii. Inclusion of Article 2(6) (Interpretation) to provide that all references to authorised development includes construction, maintenance, operation, use and decommissioning of the authorised development.
   iv. Amendment in Article 3(1)(b) (Electronic Communications) to include the words “being “in writing” includes references to an electronic communication.

b. Amendments to Part 2 (Principal Powers):
   i. Amendments to Article 5(1)(b) and (c) (Limits of Deviation) to include Work Nos 12A, 15A and 15B.
   ii. Amendment to Article 8 (Planning Permission) to include the words ‘so long as the carrying out, use of operation of such development does not prevent the undertaker from complying with this Order.’.
   iii. Inclusion of Article 9(2) (Benefit of the Order) for completeness.
   iv. Amendment of the title of Article 10 from “Consent to transfer benefit of the Order” to “Consent to transfer the benefit of the Order”, in line with previous Orders.
   v. Amendment of Article 10(7) (Consent to transfer benefit of the Order) to change the word ‘five’ to ‘fourteen’ in relation to the notice given to the Secretary of State.

c. Amendments to Part 4 (Compulsory Acquisition):
   i. Amendment to Article 24(2) (Compulsory acquisition of land) to include additional articles that Article 24 is subject to.
   ii. Amendments to Article 25 (Time limit for exercise of authority to acquire land and rights compulsorily) and Article 28 (Application of the 1981 Act) to reflect changes made by section 185 of the Levelling-up and Regeneration Act 2023 to the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981. The 2023 Act provides that the applicable period for the time limit for giving notice to treat and for a general vesting declaration will be that specified in the Order which in this case is five years from the day the Order is made. Amendments in Article 29 (Application of Part 1 of the 1965 Act) are made for similar reasons.

d. Amendments to Part 5 (Supplemental Powers):

i. Inclusion of Article 38(6) (Authority to survey and investigate the land) for completeness.

ii. Amendment of Article 39(1) (Felling or lopping of trees) to include the words “or cut back any roots of”.

iii. Insertion of Article 40(4) and (5) (Removal of hedgerows) around compensatory measures for unnecessary damage done to hedgerows by the undertaker.

e. Amendments to Part 6 (Operations):

i. Amendment to Part 6 (Operations) to rename this Part to “Part 6 (Miscellaneous and General) for clarity.

iii. Removal of Article 41 (13) and (14) (Removal of human remains) for completeness.

iv. Amendments to Article 45 (Defence in respect of statutory nuisance) for completeness.

v. Inclusion of Article 46(3) (Certification of plans, etc.) for completeness.

vi. Amendment of Article 48 (Procedure in relation to certain approvals) to separate out the exemptions for clarity.

vii. Amendment of Article 49(2) (Arbitration) for clarity.

f. Amendments to Schedule 2 (Requirements):

i. Inclusion of Requirement 4(9) (Environmental management) to secure the necessary avoidance or mitigation of any residual adverse effects.

ii. Inclusion of a new Requirement 8 (Water Resources Assessment) reflecting the agreement reached by the Applicant and AW regarding the supply of water for the construction and operation of the development.

iii. Inclusion of an updated Requirement 16 (Fuel Type) securing a minimum of municipal and non-municipal residual waste amount from within the East Midlands waste area. Associated amendments were made to Schedule 2 Part 1 (Interpretation) to include definitions for “waste area” and “waste area plan”, and to Schedule 15 (Documents and plans to be certified) to include details concerning the “waste area plan”.

iv. Amendment to Requirement 18 (Combined heat and power) to include the construction of the northern spur and produce an approved report to the relevant planning authority. Associated amendments were made to Schedule 2 Part 1 (Interpretation) to include definitions for “combined heat and power assessment” and “northern spur”, and to Schedule 15 (Documents and plans to be certified) to include details concerning the “combined heat and power assessment”.

v. Amendment to Requirement 23 (Noise) for the reasons given in this decision letter.

vi. Amendment to Requirement 24 (PRF) to commit to the delivery of a plastic recycling facility prior to Work No. 1 coming into operation.

vii. Removal of Requirement 28 (Construction COMAH site management plan) as it is not necessary for the reasons given in this decision letter.

viii. Amendment to Requirement 30 (Fees) to refer to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.

ix. Amendment to Requirement 32(2)(b) (Appeals) to replace the words "the requirement consultee" with "any requirement consultee" and insert the words "required to be consulted pursuant to the article or requirement which is the subject of the appeal" at the end of the sub-paragraph.

g. Schedule 11 (Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights):
   i. Inclusion of paragraph 3 for completeness.

h. Schedule 14 (Protective Provisions):
   i. In Part 1 (For the Protection of Electricity, Gas, Water and Sewerage Undertakers), amendments made to paragraph 4 to reflect the approach taken in articles 14 and 15 and the fact that these powers relate to both streets and public rights of way.

   ii. In Part 2 (For the Protection of Operators of Electronic Communications Code Networks), addition of and amendments to several definitions in paragraph 12(2).

   iii. In Part 3 (For the Protection of Anglian Water Services Limited), amendment made in paragraph 18 to include Anglian Water's address.

   iv. In Part 6 (For the Protection of Cadent Gas Limited), removal of Article 72 (Protective Works to Buildings) for the reasons given in the relevant section of this decision letter.

9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interest of clarity and consistency and to achieve consistency with other DCOs.

10. Challenge to decision

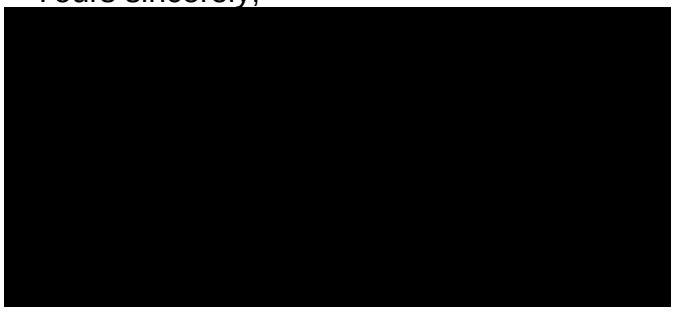
10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A to this letter.

11. Publicity for decision

11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

11.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Planning Delivery

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010116

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effect on Integrity
AW	Anglian Water
BESS	British Energy Security Strategy
BNG	Biodiversity Net Gain
CA	Compulsory Acquisition
CBMF	Concrete Block Manufacturing Facility
CCUS	Carbon Capture Utilisation and Storage
COMAH	Control of Major Accident Hazards
DCO	Development Consent Order
dDCO	Draft Development Consent Order
EA	The Environment Agency
EIA	Environmental Impact Assessment
ERF	Energy Recovery Facility
ES	Environmental Statement
ExA	The Examining Authority
GCN	Great Crested Newt
GHNF	Green Heat Network Fund
HRA	Habitats Regulations Assessment
HSE	The Health & Safety Executive
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
JPEL	Jotun Paints (Europe) Limited
LIR	Local Impact Report
LSE	Likely Significant Effect
MW	Megawatt
NE	Natural England
NLC	North Lincolnshire Council
NPS	National Policy Statement
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
PA2008	The Planning Act 2008
PRF	Plastic Recycling Facility
PSED	Public Sector Equality Duty
RCF	Recycled Carbon Fuel
RDF	Refuse Derived Fuel
RIES	Report on the Implications for European Sites
ROC	Reasonable Operating Case
RR	Relevant Representation
SAC	Special Area of Conservation
SAF	Sustainable Aviation Fuel

SoCG	Statement of Common Ground
SMP	Soil Management Plan
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TP	Temporary Possession
WFD	Water Framework Directive