



Department for  
Energy Security  
& Net Zero

# Habitats Regulations Assessment for an Application Under the Planning Act 2008

## Yorkshire Green Energy Enablement Project

Regulation 63 of the Conservation of Habitats  
and Species Regulations 2017

March 2024

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## List of abbreviations

<b>Term</b>	<b>Abbreviation</b>
Adverse Effect on Integrity	AEoI
Appropriate Assessment	AA
Construction Environmental Management Plan	CEMP
Development Consent Order	DCO
Environment Agency	EA
Environmental Statement	ES
European Economic Area	EEA
Examining Authority	ExA
Functionally Linked Land	FLL
Habitat Regulations Assessment	HRA
Interested Parties	IPs
Likely Significant Effect	LSE
Nationally Significant Infrastructure Project	NSIP
National Site Network	NSN
Natural England	NE
No Significant Effects Report	NSER
North Yorkshire Council	NYC
Report on the Implications for European Sites	RIES
Special Areas of Conservation	SACs
Special Protection Areas	SPAs
Statement of Common Ground	SoCG
Statutory Nature Conservation Body	SNCB
Supplementary Advice on Conservation Objectives	SACO
The Planning Inspectorate	The PINS
Yorkshire Wildlife Trust	YWT
Zone of Influence	ZoI

# 1 Introduction

## 1.1 Background

This is a record of the Habitats Regulations Assessment (“HRA”) that the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) has undertaken under the Conservation of Habitats and Species Regulations 2017<sup>1</sup> (“the Habitats Regulations”) as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) in respect of the Development Consent Order (“DCO”) for the Yorkshire Green Energy Enablement Project and its associated infrastructure (the “Project”). The Examining Authority (“ExA”) defines this as the “Proposed Development”. For the purposes of these Regulations, the Secretary of State is the competent authority.

The Project comprises a new substation at Overton, cable sealing end compounds (CSECs) and new overhead lines connecting into Overton Substation (including a 2.8km 400kV overhead line and two 275kV overhead lines 1.5 – 2.1km in length). Also included is the removal of existing 275kV overhead line, realignment, and refurbishment of existing overhead line within the areas north-west of York, Poppleton, Tadcaster and Monk Fryston. Two new CSECs are proposed at Tadcaster, along with a new substation at Monk Fryston and realignment of 275kV and 400kV overhead lines in this location, together with other associated works at the existing Osbaldwick Substation. The Project is described in more detail in Section 2.

The Project constitutes a nationally significant infrastructure project (“NSIP”) as defined by s.14(1)(b) of the Planning Act 2008 as it is for the installation of an electric line above ground of a length no less than 2km and a nominal voltage no less than 132kV.

The Project was accepted by the Planning Inspectorate (“PINS”) on 8 December 2022 and three Inspectors were appointed as the Examining Authority (“ExA”) for the Application. The Examination of the Project application began on 22 March 2023 and concluded on 15 September 2023. The ExA submitted its report of the examination including its recommendation (“the ExA’s Report”) to the Secretary of State on 14 December 2023. Numbered references to the ExA’s Report are presented in the format “[ER \*.\*]”.

This HRA also contains a consideration of the potential effects of the Project upon protected sites in European Economic Area (“EEA”) States (“transboundary sites”). This is described in more detail in Section 6.

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2017/1012/contents>

## 1.2 Habitats Regulations Assessment

The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. In the UK, the Habitats Regulations apply as far as the 12 nautical miles limit of territorial waters.

The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (“SACs”). The Regulations also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs together, referred to as European sites in legislation, form part of the UK’s National Site Network (“NSN”).

The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites within the NSN (collectively referred to in this HRA as “protected sites”).

Regulation 63 of the Habitats Regulations provides that:

*...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.*

And that:

*In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*

This Project is not directly connected with, or necessary to, the management of a protected site. The Habitats Regulations require that, where the Project is likely to have a significant effect (“LSE”) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (“AA”) is carried out to determine whether or not the Project will have an adverse effect on the integrity (“AEol”) of the site in view of that site’s conservation objectives. In this document, the first stage assessment of LSEs and, where required, the second stage assessment of AA to determine whether there is an AEol of a protected site, are collectively referred to as the Habitats Regulations Assessment (HRA).

The Secretary of State has had regard to relevant guidance on the application of the HRA including the PINS (2022) Advice Note 10<sup>2</sup>, as well as joint guidance by DEFRA, Natural England

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<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-ten/>

(“NE”), the Welsh Government, and Natural Resources Wales (2021) on ‘Habitats Regulations Assessment: protecting a European site’<sup>3</sup>.

### 1.3 Site conservation objectives

Where an AA is required in respect of a protected site, Regulation 63(1) of the Habitats Regulations requires that it be an AA of the implications of the plan or project for the site in view of its conservation objectives. Government guidance also recommends that in carrying out the LSE screening, applicants must check if the proposal could have a significant effect on a protected site that could affect its conservation objectives.

DEFRA Guidance indicates that disturbance to a species or deterioration of a protected site must be considered in relation to the integrity of that site and its conservation objectives<sup>4</sup>. It states that *“the integrity of a site is the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was designated”*.

Conservation objectives have been established by NE. When met, each site will contribute to the overall favourable conservation status of the species or habitat feature across its natural range. Conservation objectives outline the desired state for a protected site, in terms of the interest features for which it has been designated. If these interest features are being managed in a way which maintains their nature conservation value, they are assessed as being in a ‘favourable condition’. An AEoI is likely to be one which prevents the site from making the same contribution to favourable conservation status for the relevant feature as it did at the time of its designation. There are no set thresholds at which impacts on site integrity are considered adverse. This is a matter for interpretation on a site-by-site basis, depending on the designated feature and nature, scale, and significance of the impact.

NE has issued generic conservation objectives, which should be applied to each interest feature of the site. Supplementary advice on conservation objectives (“SACOs”) for each site underpins these generic objectives to provide site-specific information and give greater clarity to what might constitute an adverse effect on a site interest feature. SACOs are subject to availability and are currently being updated on a rolling basis.

Where supplementary advice is not yet available for a site, NE advises that HRAs should use the generic objectives<sup>5</sup> and apply them to the site-specific situation. For SPAs, the overarching objective is to avoid the deterioration of the habitats of qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Habitats Regulations. This is achieved by, subject to natural change, maintaining and restoring:

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<sup>3</sup> <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

<sup>4</sup> <https://www.gov.uk/guidance/appropriate-assessment>

<sup>5</sup> <http://publications.naturalengland.org.uk/publication/6734992977690624?cache=1656417868.31>

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of the qualifying features; and
- the distribution of the qualifying features within the site.

For SACs, the overarching objective is to avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving favourable conservation status of each of the qualifying features. This is achieved by, subject to natural change, maintaining and restoring:

- the extent and distribution of the qualifying natural habitats and habitats of qualifying species;
- the structure and function (including typical species) of qualifying natural habitats;
- the structure and function of the habitats of qualifying species;
- the supporting processes on which qualifying natural habitats and habitats of qualifying species rely;
- the populations of qualifying species; and
- the distribution of qualifying species within the site.

The conservation objectives and, where available, supplementary advice on conservation objectives have been used by the Secretary of State to consider whether the Project has the potential to have an AEoI of sites, either alone or in-combination with other plans or projects.

The relevant SACOs, as published by NE and the Joint Nature Conservation Committee (“JNCC”), are referenced in Table 1 of this HRA.

### 1.4 The Report on the Implications for European Sites and statutory consultation

Under Regulation 63(3) of the Habitats Regulations the competent authority must consult the appropriate Statutory Nature Conservation Body (“SNCB”) and have regard to any representation made by that body within such reasonable time as the authority specifies. NE is the SNCB for England and for English waters within the 12 nm limit.

The ExA, with the support of the Inspectorate’s Environmental Services Team, produced a Report on the Implications for European Sites (“the RIES”). The purpose of the RIES was to compile, document, and signpost information submitted by the Applicant and IPs during the Examination (until Deadline 6 on 28 July 2023). It was issued to ensure that IPs, including NE as the SNCB under Regulation 5 of the Habitats Regulations, had been formally consulted on Habitats Regulations matters in respect of the Application for the Project during the Examination.

The RIES was published on the PINS NSIP website and the ExA notified IPs that it had been published. Consultation on the RIES was undertaken between 16 August 2023 and 6 September 2023. The Applicant [REP7-021] provided comments on the RIES at Deadline 7 (6 September



2023). NE [REP8-028] provided comments on the RIES at Deadline 8 (13 September 2023). No other IPs provided comments on the RIES.

## 1.5 Documents referred to in this HRA

This HRA has taken account of, and should be read in conjunction with, the documents produced as part of the Application and Examination, which are available on the PINS NSIP website<sup>6</sup>. In particular:

- the ExA's Report;
- the RIES;
- the Applicant's assessment of effects, including:
  - the Applicant's No Significant Effects Report ("NSER") [AS-018];
- the Environmental Statement ("ES") [APP-080] [APP-081] [APP-083] [APP-086];
- the Statement of Common Ground ("SoCG") with NE [REP5-037] and the Environment Agency ("EA") [REP7-030].

Plus, all other information submitted during the Examination and during the Secretary of State's consideration of the Application.

The final signed SoCG between the Applicant and NE [REP5-037] was submitted at Deadline 5 (11 July 2023). The SoCG confirmed that all matters relating to HRA and otherwise were agreed between the two parties, and that there were no HRA matters outstanding between them in respect of the Project.

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<sup>6</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/drax-bioenergy-with-carbon-capture-and-storage-project/?ipcsection=overview>

## 2 Project description

The Project is located within the administrative areas of the City of York Council (CYC), Leeds City Council (LCC) and North Yorkshire Council (NYC). The most northerly section of the Project would be located approximately 1.5km north-east of Shipton, some 10km north-west of the City of York. The most southerly section of the Project would be located at Monk Fryston Substation, to the east of the A1(M) and south of the A63. The location of the Project is shown in the Location Plan [REP7-002], as well as the Land Plans [AS-005 – AS-010], and is described in detail in ES Chapter 3 [APP-075].

The Project comprises a new substation at Overton, cable sealing end compounds (CSECs) and new overhead lines connecting into Overton Substation (including a 2.8km 400kV overhead line and two 275kV overhead lines 1.5 – 2.1km in length). Also included is the removal of existing 275kV overhead line, realignment, and refurbishment of existing overhead line within the areas north-west of York, Poppleton, Tadcaster and Monk Fryston. Two new CSECs are proposed at Tadcaster, along with a new substation at Monk Fryston and realignment of 275kV and 400kV overhead lines in this location, together with other associated works at the existing Osbaldwick Substation.

The Project works comprise:

- **Work No.1 to Work No. 11** – Overhead electrical line and substation works;
- **Work No. U1 to Work No. U13** – Underground works; and
- Associated development in connection with the aforementioned Work Nos.

The site is split into the following parcels:

- **Section A:** Osbaldwick Substation;
- **Section B:** The North West of York Area;
- **Section C:** Moor Monkton to Tadcaster;
- **Section D:** The Tadcaster Area;
- **Section E:** Tadcaster to Monk Fryston; and
- **Section F:** Monk Fryston Substation Area.

### 2.1 Changes to the Application during Examination

A number of changes were made to the application documents during the Examination, including amendments to the wording of the dDCO. These changes sought to improve the clarity of the drafting and address any omissions, discrepancies and other matters which were raised during the Examination.

The Applicant also submitted several revisions to the application documents, details of which can be found in the Application Guide submitted at Deadline 8 [REP8-002]. This provides a guide to all documents submitted as part of the Application and was updated at each Deadline when

new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination by the Applicant.

### 3 Stage 1: Screening for Likely Significant Effects (“LSEs”)

Under Regulation 63 of the Habitats Regulations, the Secretary of State must consider whether the Project will have an LSE on a protected site, either alone or in-combination with other plans or projects. The purpose of this section is to identify any LSEs on protected sites that may result from the Project and to record the Secretary of State’s conclusions on the need for an AA.

The Project site is within the Zone of Influence (ZoI) of several internationally, nationally, and locally protected and statutorily designated sites, as illustrated in Figure 1a and Figure 1b. The Applicant identified protected sites within 2km of the Project, or protected sites within 20km of the Project that are designated for ornithological or bat features. The Applicant also considered whether there was functionally linked land (FLL) used by ornithological features of protected sites within the 20km search area. The protected sites and qualifying features that were considered in the Applicant’s screening exercise are presented in Section 5 and Table 5.2 of the NSER [AS-018]. The Applicant screened the following protected sites for inclusion within the assessment:

- Lower Derwent Valley Ramsar site (6.22km south)
- Lower Derwent Valley SPA (6.19km east)

NE [RR-031] [REP5-037] [REP8-028] confirmed that the protected sites identified by the Applicant are those relevant to the Project. The protected sites and qualifying features identified were not disputed by any IPs, with the exception of Yorkshire Wildlife Trust (YWT) as detailed below.

The NSER [AS-018] screened out the Lower Derwent Valley SAC (5.7km south) and River Derwent SAC (5.7km east) from the assessment. The Applicant concluded that the respective sites did not need to be considered further as they lie outside of the Applicant’s defined ZoI (i.e. they are more than 2km from the Order Limits and do not contain any bat or ornithological qualifying features), and that the Project is located outside of the River Derwent catchment.

However, the NSER [AS-018] Appendix C Table C.1, identified potential impact pathways on mobile qualifying features of the River Derwent SAC (River lamprey, sea lamprey, bullhead, otter) and the Lower Derwent Valley SAC (Otter) that may use the River Ouse, which would be crossed by the Project. The Applicant considered that the effects on the qualifying features of these protected sites would be “... *negligible in view of the Project’s embedded environmental measures ... and the measures set out in the CoCP ... which would be implemented by DCO requirement 5 ... to protect surface waters from pollution.*” NE [REP1-025] [REP8-028] confirmed that it was content with the conclusion of the NSER to screen out the River Derwent SAC and Lower Derwent Valley SAC. The ExA [C.2.11.] were also content with the Lower Derwent Valley SAC and River Derwent SAC to be screened out from the Applicant’s assessment. However, under the ruling of the European Court of Justice (ECJ) in *People Over Wind, Peter Sweetman v Coillte Teoranta (C-323/17)* (the “Sweetman Judgment”)<sup>7</sup>, in reaching a conclusion regarding LSEs, the Secretary of State (as the competent authority) at the screening stage should take no

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<sup>7</sup> <https://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>

account of the measures intended to avoid or reduce the harmful effects of the plan or project on any protected site. While the Secretary of State notes the position of the Applicant and NE, out of an abundance of caution she determines that the River Derwent SAC and Lower Derwent Valley SAC should be included within her consideration of LSEs.

During the Examination, YWT [REP4-043] identified six additional protected sites that it considered could potentially be affected by the operation of the Project from an increased risk of bird collision on migration routes. YWT identified the following protected sites:

- North Norfolk Coast SPA
- North Norfolk Coast Ramsar site
- Ouse Washes SPA
- Ouse Washes Ramsar site
- The Wash SPA
- The Wash Ramsar site

YWT [REP4-043] also considered that whooper swan of the Nene Washes SPA and Ramsar site could also be affected from an increased risk of bird collision. However, as the whooper swan is not a qualifying feature of these protected sites, the Nene Washes SPA and Ramsar site will not be considered further.

In response to the ExA [RIESQ 2.2.1 [PD-016]], NE [REP8-028] considered that it does “... *not hold any evidence that any additional European sites should be included in the Applicant’s HRA*”, other than those listed in Table 2.1 of [PD-016], and not for those protected sites raised by YWT.

The position of YWT remained unchanged in their final SoCG with the Applicant submitted at Deadline 5 [REP5-039].

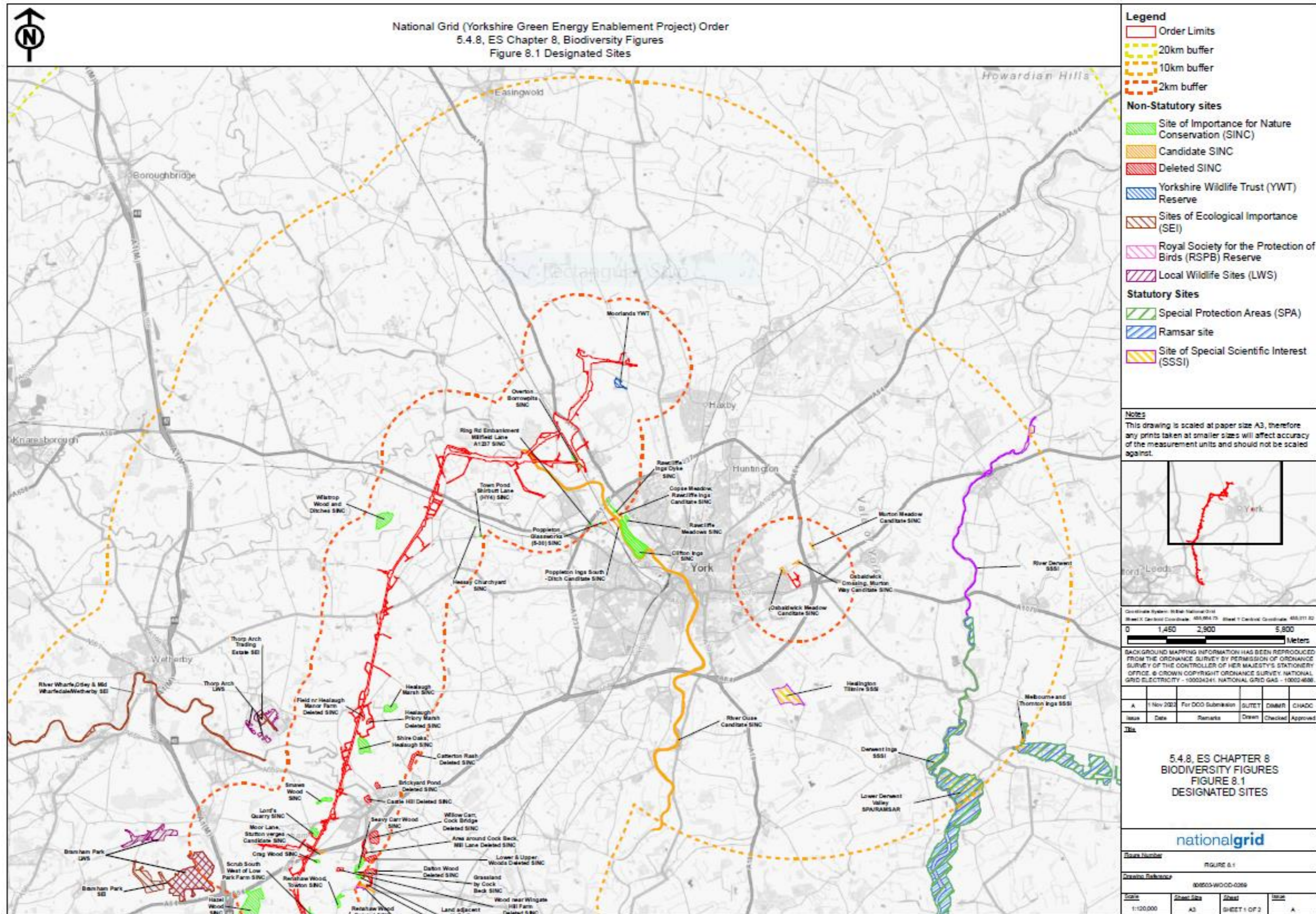


Figure 1a: Spatial relationship of the Project and protected sites.

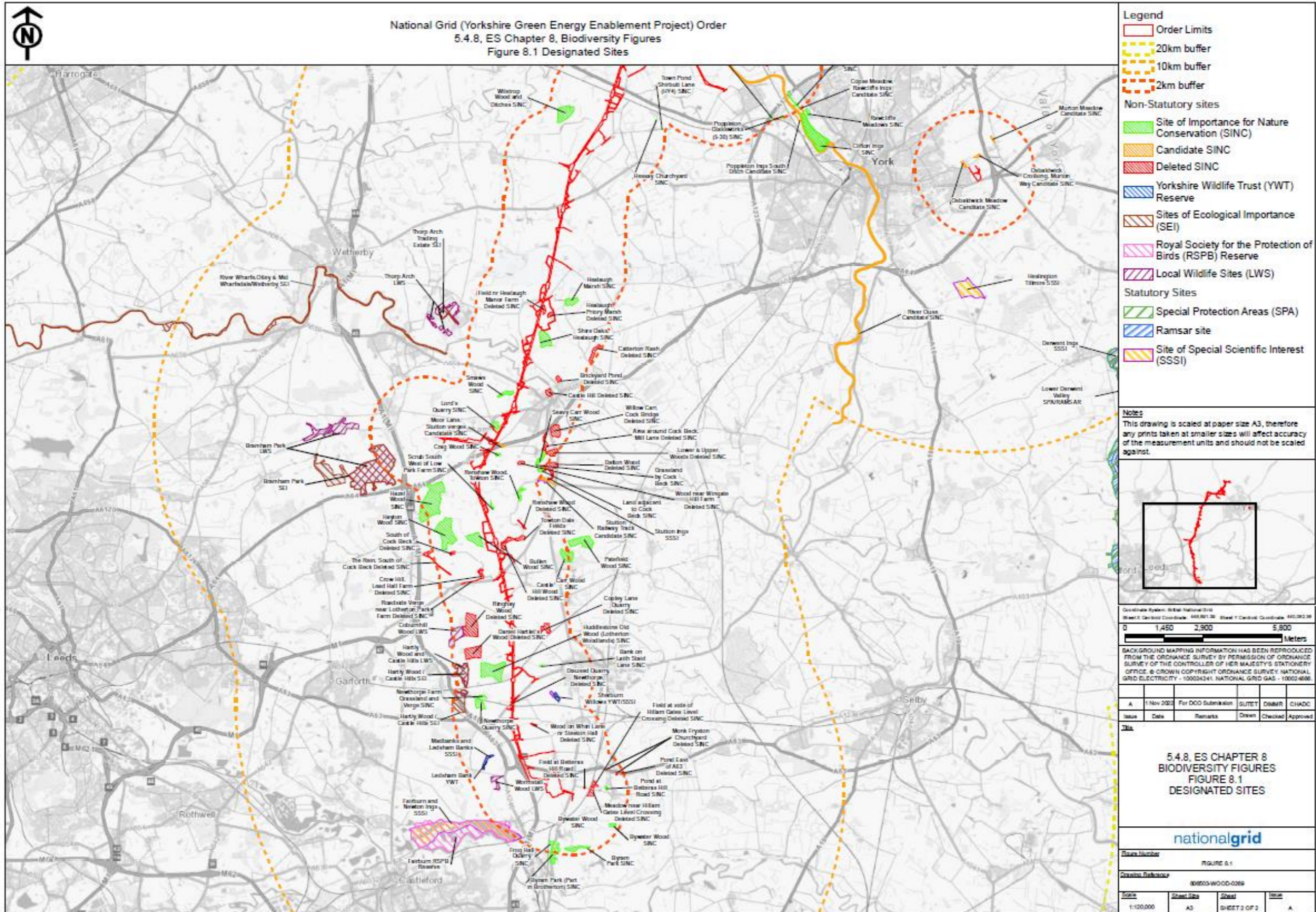


Figure 1b: Spatial relationship of the Project and protected sites.

### 3.1 Likely Significant Effects alone

The Applicant identified the impacts, considered to have the potential to result in LSEs, from the Project alone in Section 5.3 of the NSER.

The following impacts considered by the Applicant to have the potential to result in LSEs on protected sites during construction, operation, and decommissioning of the Project were:

- Permanent or temporary land take / land use change (resulting in habitat loss or degradation and / or loss of fauna);
- Fragmentation of habitats (resulting in a reduction in connectivity);
- Increased noise, vibration, light and movement levels (resulting in disturbance / displacement);
- Changes in hydrology (resulting in the effects of habitat loss or degradation and / or loss of fauna);
- Changes in air quality (dust or vehicle emissions resulting in habitat degradation); and
- Pollution events (including the liberation of sediments and chemicals resulting in habitat loss or degradation and / or loss of fauna)

The protected sites affected, and the potential impact pathways are provided in Table 6.1 of the NSER [AS-018].

NE [RR-031] confirmed that it agreed with the impact pathways identified by the NSER.

Table 6.1 of the NSER concluded that the Project alone would have no LSE on the qualifying features of the Lower Derwent Valley SPA and Ramsar site, as neither protected site nor any functionally linked land lies within the ZoI of the Project. The NSER noted that two species (golden plover and teal) that are qualifying features of the SPA, and (teal) of the Ramsar site, were recorded within the Order Limits of the Project during surveys [APP-130 to APP-132]. It was considered unlikely that these birds originated from the respective protected sites due to the distance being greater than the maximum 3km foraging range of the species.

The conclusions of the NSER [AS-018] in relation to both the Lower Derwent Valley SPA and Ramsar site and their qualifying features were not disputed by NE [RR-031] [REP1-025] [REP5-037] or YWT [REP1-026] [REP5-039] during the Examination.

The ExA was satisfied that the correct impact-effect pathways on each site were assessed and that there would be no LSE from the Project alone to the Lower Derwent Valley SPA and Ramsar site [ER C.2.23].

The Secretary of State is content to adopt the rationale of the Applicant and the ExA that there would be no LSEs from the Project alone to the Lower Derwent Valley SPA and Ramsar site.

#### River Derwent SAC and Lower Derwent Valley SAC

As noted above, however, the Secretary of State considers that the River Derwent SAC and Lower Derwent Valley SAC, screened out of assessment in the NSER, should be included within her consideration of LSE.



The Project would conduct works on existing or proposed overhead lines on the River Ouse at XC240-421 and XCP008-009 and the River Wharfe at XC471-472, directly connecting the Project to the mobile qualifying features of the River Derwent SAC and Lower Derwent Valley SAC via the system of watercourses. As such, the Secretary of State considers there to be potential impact pathways from the Project alone on the mobile qualifying features of the River Derwent SAC (River lamprey, sea lamprey, bullhead, otter) and the Lower Derwent Valley SAC (Otter), particularly:

- Changes in hydrology (resulting in the effects of habitat loss or degradation and / or loss of fauna); and
- Pollution events from the accidental release of sediment load and pollutants (resulting in the effects of habitat loss or degradation and / or loss of fauna).

Given the mobile nature of the qualifying features of the River Derwent SAC and the Lower Derwent Valley SAC, the large ranges of the species<sup>8</sup>, the proximity of the two protected sites to the Order Limits of the Project, as well as the connecting system of watercourses, there is potential for the qualifying features to be negatively affected by the Project. As such, taking no account of the measures intended to avoid or reduce harmful effects on any protected site, the Secretary of State considers that the Project alone may give rise to LSE on the qualifying features of the River Derwent SAC and Lower Derwent Valley SAC.

### Risk of bird collision on migration routes along the River Ouse

The potential for an increased risk of bird collision with overhead lines on bird migration routes was not considered as an impact pathway in the NSER [AS-018].

The ExA (ExQ1 3.5.1 in [PD-007]) requested confirmation from NE on whether it agreed with the Applicant's decision not to assess this as an impact pathway for LSEs. NE [REP2-080] confirmed that it was satisfied with the approach taken by the Applicant and considered that the potential for an increased risk of bird collision on migration routes is low.

YWT [REP4-043] disputed the approach taken by the Applicant. YWT considered that there is potential for an increased risk of bird collision on bird migration routes during operation of the Project in the vicinity of the River Ouse overhead line crossing. YWT considered that there could be population effects for the qualifying features of the six additional protected sites they raised during the Examination. YWT stated that these "*species are known to short-stop in the Lower Derwent Valley and in the Lower Ouse in considerable, although varying, numbers during their spring migration*" and that they will also "*fly at lower levels along this river corridor during conditions of poor visibility or darkness, increasing the risk of collisions.*" As such, YWT [REP4-043] was of the view that bird diverters should be fitted as embedded mitigation at the River Ouse and River Wharfe overhead line crossings.

YWT [REP4-043] (ExQ2 3.0.5 [AS-023]) did not consider that the proposed infrastructure at the River Wharfe crossing could result in an impact pathway to qualifying features of a protected site, albeit with a possibility of collision to local populations.

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<sup>8</sup> <https://www.gov.uk/guidance/otters-advice-for-making-planning-decisions>

At Issue Specific Hearing 2 [EV-005], the ExA sought clarification from the Applicant as to its position on the use of bird diverters and its response to the concerns of YWT. The Applicant [REP4-023] stated that a 20km ZOI was used in the NSER, which it considered to be standard for a project of its nature and based on the maximum distance relevant bird species will travel from roost / nest sites to foraging areas. It noted that the protected sites raised by YWT were located between 130km to 180km south-east of the Project at the closest point. The Applicant also acknowledged the concern of YWT regarding migrating birds stopping in the Lower Derwent and Lower Ouse but stated that species of geese and swan typically fly at heights in excess of 150m during migration, above the maximum height of the proposed overhead line crossings. The Applicant also stated that “... *flight activity may be influenced by changing weather ... [but] it is generally acknowledged that birds will begin their migration in good weather conditions ... it is extremely unlikely that significant numbers would migrate at low levels in bad weather along the River Ouse at the exact point of the overhead lines.*”

At Deadline 5, in response to the comments of YWT at Deadline 4 and ExQ2 [PD-011], the Applicant [REP5-082] [REP5-083] provided further information to support its position. The Applicant noted that their winter transect surveys [APP-200] did not record whooper swan and recorded only three instances of pink-footed goose (peak count of 85 individuals) flying very high overhead. The Applicant also cited evidence to support its comments relating to the flight heights of species of geese and swan during migration, noting a study that found the average height ranged from 119.8m to 1,135.6m, with birds at inland sites flying higher and a further study concluding that favourable local weather conditions were key in triggering migration.

In response to ExQ2 3.0.3, the Applicant confirmed that it was not aware of any records of bird collision at existing overhead lines on the River Ouse or the River Wharfe. In response to ExQ2 3.0.8, the Applicant also confirmed that it had requested records of bird collision from Yorkshire Ornithological Club who confirmed on 30 June 2023 that it did not hold any for the overhead line crossing along the River Ouse.

The Applicant [REP5-082] considered that based on the available evidence and consultation with NE, there is a negligible risk of population effects to the qualifying features of protected sites from the Project and that fitting of bird diverters would constitute a disproportionate level of mitigation.

The ExA (ExQ2 3.0.5 [PD-011]) sought further clarification from YWT as to its position. YWT [AS-023] indicated that Yorkshire Ornithological Club maintains records of whooper swans and pink-footed goose and stated that “*it is widely understood that whoopers are wintering on the Ouse and Nene Washes and the pink footed geese are from North Norfolk.*” YWT also considered that without daily inspections beneath the overhead line during the migration season it was not possible to conclude that they are not causing collisions, as predators remove carcasses quickly, and that without evidence of the current level of collisions a precautionary approach must be taken to avoid impacts.

At Deadline 6, the Applicant [REP6-058] reiterated that there is no evidence to indicate that the proposed overhead line crossing at the River Ouse would pose a significant risk of bird collision which would result in population effects to protected sites. The Applicant also confirmed that as part of its desk study, it had obtained data from the North and East Yorkshire Ecological Data Centre and extracted data from the Yorkshire Naturalist Union’s Yorkshire Bird Report 2015 and Yorkshire Ornithological Club Report 2019. It stated that records relating to whooper swan were

limited to the Yorkshire Ornithological Club Report 2019, with all records being more than 2km from the proposed overhead line crossing at the River Ouse. Furthermore, the Applicant acknowledged that while predators are likely to quickly remove evidence of bird collision for smaller species, given the presence of regularly used public footpaths it would be expected that any evidence of collision-related deaths for larger species, such as whooper swan and pink-footed goose, would have been reported.

In response to the ExA, NE [AS-024] confirmed that it *“has assessed the development in line with our Impact Risk Zones (IRZs) for impact pathways on designated sites. Natural England does not hold any evidence to support that bird populations from the Ouse Washes, Nene Washes, The Wash and North Norfolk Coast designated sites would be impacted by the proposed scheme.”*

The final SoCG with YWT [REP5-039] indicates that the respective positions of the Applicant and YWT on this matter remain unchanged.

Noting the information provided during the Examination, as well as the views of NE, the ExA [ER C.2.50.] is content that the installation of the proposed overhead line crossing at the River Ouse and the reconductoring of the overhead line crossing at the River Wharfe would not result in LSE to the protected sites and qualifying features raised by YWT, and that embedded mitigation measures in the form of bird diverters are not required.

While the Secretary of State acknowledges the information presented by the Applicant and IPs, she is also mindful that the Examination was conducted between March to September 2023, outside of the migratory and wintering periods of the whooper swan and pink-footed geese. To ensure that she has the best scientific information before her, the Secretary of State issued a request dated 16 January 2024 to the Applicant, YWT, and the RSPB for further information regarding whether evidence of bird collisions has arisen since the close of the Examination. YWT did not provide a response, and neither the Applicant nor the RSPB could provide any evidence of bird collisions with existing overhead line crossings on the River Ouse and River Wharfe.

Based on the information before her, the views of IPs, the recommendations of the ExA, and with no evidence presented to the contrary, the Secretary of State is content to adopt the rationale of the Applicant, NE, and the ExA that there would be no LSE to any protected site from the Project as a result of an increased risk of bird collision on migration routes.

### 3.2 Likely Significant Effects in-combination

The NSER [AS-018] considered that as there are no pathways for LSEs from the Project alone, there is no potential for any in-combination effects. As such, no plans or projects were identified for consideration in the NSER.

NE [RR-031] and YWT [REP1-026] [REP5-039] did not dispute the Applicant’s approach to the assessment of in-combination effects.

The ExA [C.2.53.] is satisfied with the Applicant’s approach to the assessment of in-combination effects and agrees with the conclusion that there would be no LSE from in-combination effects arising from the Project with other plans and projects.

The Secretary of State is content to adopt the rationale of the Applicant and the ExA that there would be no LSEs from the Project in-combination with other plans and projects to the Lower Derwent Valley SPA and Ramsar site.

However, adopting a precautionary approach, the Secretary of State considers that the Project, in-combination with other plans and projects, may give rise to LSEs on the qualifying features of the River Derwent SAC and Lower Derwent Valley SAC.

Using the cumulative effects assessment within the ES [APP-090], the Secretary of State identifies the following plans and projects that have the potential to contribute to LSE, in-combination with the Project:

- **ID64** – Erection of an energy storage facility
- **ID72** – Application for extraction of clay
- **ID85** – Extension to Jackdaw Crag Quarry
- **ID89** – Application for quarry restoration
- **ID94** – Application for garden village of 1348 dwellings

The Secretary of State considers there to be potential impact pathways from the Project in-combination with other plans and projects on the mobile qualifying features of the River Derwent SAC (River lamprey, sea lamprey, bullhead, otter) and the Lower Derwent Valley SAC (Otter), including:

- Changes in hydrology (resulting in the effects of habitat loss or degradation and / or loss of fauna); and
- Pollution events from the accidental release of sediment load and pollutants (resulting in the effects of habitat loss or degradation and / or loss of fauna).

### 3.3 Likely Significant Effects conclusion

The Secretary of State has carefully considered the potential effects of the Project on all qualifying features of the protected sites raised during the Examination, taking into account their conservation objectives, to determine whether there will be LSEs in the context of the Habitats Regulations. The Secretary of State considers that sufficient information has been provided to inform an assessment in line with her duties under the Habitats Regulations.

Four protected sites and their qualifying features were considered in the Applicant's assessment of LSE: Lower Derwent Valley SPA, Lower Derwent Valley SAC, Lower Derwent Valley Ramsar site, and the River Derwent SAC. The NSER [AS-018] screened out the Lower Derwent Valley SAC and River Derwent SAC from the assessment of LSE as the "*Project's embedded environmental measures ... and the measures set out in the CoCP*" would ensure the effects on the qualifying features of the two protected sites would be "*negligible*". The NSER subsequently concluded no LSE from the Project, alone or in-combination with other plans or projects, on any of the qualifying features of the Lower Derwent Valley SPA and Ramsar site.

YWT [REP1-026] [AS-023] [REP4-043] [REP5-039] considered that there was an impact pathway on the qualifying features of six additional protected sites from an increased risk of bird collision on bird migration routes. The Applicant [REP4-023] [REP5-039] [REP5-082] [REP5-

083] disagreed with YWT and provided sufficient evidence that the six additional protected sites would not be affected by the Project. NE [AS-024] [REP5-037] [REP8-028] agreed with the conclusions of the Applicant and found no evidence to support the concerns of YWT. Noting the information provided during the Examination and the views of NE, the ExA [C.4.2] is content that there would be no LSE to the six additional protected sites and that these did not need to be considered in the NSER. As such, the Secretary of State is content to adopt the rationale of the Applicant, NE, and the ExA that there would be no LSE to any protected site from the Project, alone or in-combination, as a result of an increased risk of bird collision on bird migration routes.

NE [RR-031] [REP5-037] [REP8-028] considered that the correct protected sites and impact pathways had been assessed in the NSER and agreed with the conclusion of no LSE from the Project, alone or in-combination, on any protected site.

The ExA [C.4.3.] [C.4.4.] [C.4.9.] also considered that the correct protected sites and impact pathways had been assessed in the NSER and agreed with the conclusion of no LSE from the Project, alone or in-combination, on any protected site.

Based on the information before her, the views of IPs, and the recommendations of the ExA, the Secretary of State is content to adopt the rationale of the Applicant, NE, and the ExA that there would be no LSE from the Project, alone or in-combination with other plans and projects, on any of the qualifying features of the Lower Derwent Valley SPA and Ramsar site.

However, noting the requirements under the Sweetman Judgment and the information before her, the Secretary of State concludes that the Project, alone and in-combination with other plans and projects, has the potential to give rise to LSE on the qualifying features of the River Derwent SAC and Lower Derwent Valley SAC. The LSEs are therefore taken forward to AA to consider whether the Project will result in an AEol of the identified protected sites. Table 1 presents the protected sites for which the Secretary of State considers that significant effects cannot be excluded, either alone or in-combination, alongside the qualifying features and relevant impact pathways.

## 4 Appropriate Assessment methodology

The requirement to undertake an AA is triggered when a competent authority, in this case the Secretary of State, determines that a plan or project is likely to have a significant effect on a protected site either alone or in-combination with other plans or projects. Guidance issued by DEFRA<sup>9</sup> states that the purpose of an AA is to assess the implications of the plan or project in respect of the site's conservation objectives, either individually or in-combination with other plans and projects, and that the conclusions should enable the competent authority to ascertain whether the plan or project will adversely affect the integrity of the site concerned. The focus is therefore specifically on the species and/or habitats for which the protected site is designated.

In line with the requirements of Regulation 63 of the Habitats Regulations:

*“In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.”*

The purpose of this AA is to determine whether an AEoI on the features of the two protected sites identified in Table 1 of this HRA, as a result of the Project alone or in-combination with other plans or projects, can be excluded in view of the site's conservation objectives and using the best scientific evidence available.

In accordance with the precautionary principle embedded in the integrity test and established through case law, the Secretary of State may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the protected site, and this must be demonstrated beyond all reasonable scientific doubt. If the Secretary of State cannot exclude AEoI of the affected protected sites beyond all reasonable scientific doubt, then she can only agree to a plan or project if it complies with the requirements of Regulation 64 of the Habitats Regulations. Regulation 64 provides that the Secretary of State may agree to the plan or project only if satisfied that there are no alternative solutions, and that the plan or project must be carried out for imperative reasons of overriding public interest (IROPI).

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9 <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

## 5 Stage 2: Appropriate Assessment

The Secretary of State has undertaken an objective scientific assessment of the implications of the Project on the qualifying features of the protected sites identified in her screening assessment, using the best scientific evidence available. The assessment has been made in light of the site's conservation objectives, which are set out in Table 1 of this HRA.

### 5.1 Effect pathways

The LSE considered by the Secretary of State to have the potential to result in an AEoI on the mobile aquatic qualifying features of the Lower Derwent Valley SAC and River Derwent SAC are:

- Changes in hydrology (resulting in the effects of habitat loss or degradation and / or loss of fauna); and
- Pollution events from the accidental release of sediment load and pollutants (resulting in the effects of habitat loss or degradation and / or loss of fauna).

### 5.2 Otter

As set out in Table 1, the Secretary of State identifies a number of LSE from the Project, both alone and in-combination with other plans and projects, on the otter qualifying features of the Lower Derwent Valley SAC and River Derwent SAC.

As part of the Extended Phase 1 Habitat Survey Report [REP5-020], 22 records of otter in and within 2km of the Order Limits of the Project were returned during the desk study. Field surveys conducted within the Order Limits and a buffer of 50m noted a site considered "*highly likely*" to be used by otters for resting within the Order Limits along the bank of the River Ouse (W4). Further evidence of otter along the River Ouse and its tributaries included spraint, feeding remains, resting sites, potential slides, and footprints. The Report ultimately determined that the River Ouse (W4), the River Wharfe (W9), and Cock Beck (W12) "*... provide optimal habitat for foraging, commuting, holt creation and resting places, along with smaller tributaries with plentiful bankside cover ...*" [3.3.13]. As such the ES [APP-080] considered that this "*... widespread evidence indicates that otters are likely to use suitable watercourses through land within the Order Limits as part of a network of habitat within individual home ranges.*"

Given their mobile nature, large ranges<sup>10</sup>, and the connection between the protected sites and the Project via the system of watercourses, there is potential for the qualifying feature of the Lower Derwent SAC and River Derwent SAC to be negatively affected by the Project.

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<sup>10</sup> <https://www.gov.uk/guidance/otters-advice-for-making-planning-decisions>

The Applicant highlighted that the Code of Construction Practice [REP7-042] and the Biodiversity Mitigation Strategy [REP6-039], secured by Requirement 5(2) of the DCO, propose a number of measures to minimise the risk of affecting otters, their habitat, and their activity.

Under the Biodiversity Mitigation Strategy [REP6-039], a pre-works check by the Principal Contractor's ecologist would be undertaken on any suitable habitat within all working areas and any wet ditch habitat extending 200m up and downstream would be checked for evidence of otter. Toolbox talks are also proposed to ensure all contractors are aware of the potential presence and signs of otters. Where possible, a minimum stand-off from all watercourses and ditches of between 7-9m has also been proposed to minimise the potential for riparian or in-channel habitat loss and degradation. Where disturbance to riparian or in-channel habitat cannot be avoided, once works are complete in each area all temporarily lost or degraded habitat is proposed to be reinstated and, where possible, with species-rich mixes to increase species diversity.

A Noise and Vibration Management Plan, secured under Requirement 5(2)(f) of the DCO, has been developed to minimise and mitigate against potential displacement and disturbance effects from noise and vibration during construction of the Project. Measures include the erection of acoustic screens to provide screening from sensitive ecological receptors, the use of machinery silencing and muffling equipment, and the monitoring of riverbank stability and vibration on the River Ouse during construction. A Lighting Scheme, secured under Requirement 6(1)(d) of the DCO, will also be developed to minimise the potential displacement and disturbance effects on from lighting by controlling lighting usage, minimising light spill, and locating lighting in the most appropriate locations and away from sensitive ecological receptors.

Furthermore, under the Code of Construction Practice [REP7-042], an inspection and monitoring schedule will be implemented to ensure that measures are taken to protect the surface water environment. Machinery, materials, and chemicals would be stored safely and securely to prevent the spillage of chemicals in the surrounding environment. A Pollution Incident Control Plan, secured by Requirement 6(1)(c) of the DCO, would be developed to ensure any spillages or potential pollution incidents are handled appropriately, including the provision of containment for spills of contaminants. A Drainage Management Plan, secured by Requirement 6(1)(b) of the DCO, would also include measures to ensure the appropriate interception and collection of potentially contaminated surface water runoff and the appropriate storage and management of potential pollutants. Measures, such as sediment/silt fencing, are also proposed to prevent the discharge of sediment into watercourses.

In relation to ID64, the Applicant [APP-090] considered the potential for an in-combination adverse effect on ecological receptors to be low as no evidence of protected species was recorded in the environmental impact assessments of the development. The Applicant also noted ID64 included proposed best practice mitigation measures and habitat creation. The Applicant also considered the potential for an in-combination adverse effect on ecological receptors with ID72 to be unlikely given the distance between ID72 and the Project, and as the EIA Screening Report for ID72 states that there is an absence of protected habitats and species on site or in the vicinity.

The Applicant notes that no ecology information is available for ID85. However, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID85 to be unlikely given the distance between ID85 and the Project. The Applicant notes that ID85 is



1.1km east of Cock Beck, though there are no significant watercourses in close proximity to ID85. The Applicant notes that through the Controlled Water Risk Assessment, ID85 would implement best practice mitigation measures to manage surface water runoff and control the potential risk of discharging pollution to the surrounding environment. The Applicant also notes that ID85 is to develop and implement a Noise Management Plan to manage and minimise the effect of noise on the surrounding environment. Taking into account the measures committed to by ID85 and that the Project works at this location compromise short-duration reconductoring of an existing overhead line, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID85 to be unlikely.

In relation to ID89, the Applicant notes that the environment impact assessments for ID89 conclude that following the implementation of mitigation, compensation and enhancement measures, there would be only short-term minor negative ecological impacts at the local level, with long-term ecological impacts deemed likely to be negligible. The Applicant also noted best practice mitigation measures and habitat creation in the form of new wetland habitat. Given the implementation of mitigation and enhancement measures and the distance between ID89 and the Project, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID89 to be unlikely.

The Applicant notes that no ecology information is available for ID94. However, the Applicant considered that once brought forward, ID94 would need to comply with relevant biodiversity legislation and planning policy, including the need to put in place avoidance and mitigative measures. Combined with the distance between ID94 and the Project, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID89 to be unlikely.

The Applicant [APP-080], in view of the proposed measures, considered the effect of the Project on otters, alone and in-combination with other plans and projects, as “*low negative*” and “*not significant*”. In the final SoCGs with NE [REP5-037] and the EA [REP7-030], matters are agreed as to the Applicant’s conclusion.

Based on the information before her, and subject to the measures secured through the Order, the Secretary of State is satisfied that the Project, either alone or in-combination with other plans or projects, will not adversely affect the integrity of the otter qualifying feature of the Lower Derwent Valley SAC and River Derwent SAC.

### 5.3 River lamprey, sea lamprey, and bullhead

As set out in Table 1, the Secretary of State identifies a number of LSEs from the Project, both alone and in-combination with other plans and projects, on the river lamprey, sea lamprey, and bullhead qualifying features of the River Derwent SAC.

As part of the Extended Phase 1 Habitat Survey Report [REP5-020], 5 records of bullhead within 2km and 1 record of sea lamprey 0.83km north of the Order Limits were returned during the desk study. The Report also noted records of sea lamprey and bullhead along the River Ouse (W4), the River Ouse candidate Site of Importance for Nature Conservation (SINC) citation including river lamprey, and records of bullhead along the Cock Beck (W12). The Report ultimately

determined the River Ouse to be “*optimal for notable fish species*”, and the River Wharfe and Cock Beck as “*suitable for a majority of fish species*”.

Given their mobile nature and the connection between the protected site and the Project via the system of watercourses, there is potential for the qualifying features of the River Derwent SAC to be negatively affected by the Project.

The Applicant highlighted that the Code of Construction Practice [REP7-042] and the Biodiversity Mitigation Strategy [REP6-039], secured by Requirement 5(2) of the DCO, propose a number of measures to minimise the risk of affecting notable fish species, their habitat, and their activity.

Under the Biodiversity Mitigation Strategy [REP6-039], pre-construction update surveys will be undertaken in locations where protected species have previously been identified or where habitat has been assessed as particularly favourable. Where possible, a minimum stand-off from all watercourses and ditches of between 7-9m has also been proposed to minimise the potential for riparian or in-channel habitat loss and degradation. Where disturbance to riparian or in-channel habitat cannot be avoided, once works are complete in each area all temporarily lost or degraded habitat is proposed to be reinstated and, where possible, with species-rich mixes to increase species diversity.

A Noise and Vibration Management Plan, secured under Requirement 5(2)(f) of the DCO, has been developed to minimise and mitigate against potential displacement and disturbance effects from noise and vibration during construction of the Project. Measures include the erection of acoustic screens to provide screening from sensitive ecological receptors, the use of machinery silencing and muffling equipment, and the monitoring of riverbank stability and vibration on the River Ouse during construction. A Lighting Scheme, secured under Requirement 6(1)(d) of the DCO, will also be developed to minimise the potential displacement and disturbance effects on from lighting by controlling lighting usage, minimising light spill, and locating lighting in the most appropriate locations and away from sensitive ecological receptors.

Furthermore, under the Code of Construction Practice [REP7-042], an inspection and monitoring schedule will be implemented to ensure that measures are taken to protect the surface water environment. Machinery, materials, and chemicals would be stored safely and securely to prevent the spillage of chemicals in the surrounding environment. A Pollution Incident Control Plan, secured by Requirement 6(1)(c) of the DCO, would be developed to ensure any spillages or potential pollution incidents are handled appropriately, including the provision of containment for spills of contaminants. A Drainage Management Plan, secured by Requirement 6(1)(b) of the DCO, would also include measures to ensure the appropriate interception and collection of potentially contaminated surface water runoff and the appropriate storage and management of potential pollutants. Measures, such as sediment/silt fencing, are also proposed to prevent the discharge of sediment into watercourses.

In relation to ID64, the Applicant [APP-090] considered the potential for an in-combination adverse effect on ecological receptors to be low as no evidence of protected species was recorded in the environmental impact assessments of the development. The Applicant also noted ID64 included proposed best practice mitigation measures and habitat creation. The Applicant also considered the potential for an in-combination adverse effect on ecological receptors with ID72 to be unlikely given the distance between ID72 and the Project, and as the

EIA Screening Report for ID72 states that there is an absence of protected habitats and species on site or in the vicinity.

The Applicant notes that no ecology information is available for ID85. However, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID85 to be unlikely given the distance between ID85 and the Project. The Applicant notes that ID85 is 1.1km east of Cock Beck, though there are no significant watercourses in close proximity to ID85. The Applicant notes that through the Controlled Water Risk Assessment, ID85 would implement best practice mitigation measures to manage surface water runoff and control the potential risk of discharging pollution to the surrounding environment. The Applicant also notes that ID85 is to develop and implement a Noise Management Plan to manage and minimise the effect of noise on the surrounding environment. Taking into account the measures committed to by ID85 and that the Project works at this location compromise short-duration reconductoring of an existing overhead line, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID85 to be unlikely.

In relation to ID89, the Applicant notes that the environment impact assessments for ID89 conclude that following the implementation of mitigation, compensation and enhancement measures, there would be only short-term minor negative ecological impacts at the local level, with long-term ecological impacts deemed likely to be negligible. The Applicant also noted best practice mitigation measures and habitat creation in the form of new wetland habitat. Given the implementation of mitigation and enhancement measures and the distance between ID89 and the Project, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID89 to be unlikely.

The Applicant notes that no ecology information is available for ID94. However, the Applicant considered that once brought forward, ID94 would need to comply with relevant biodiversity legislation and planning policy, including the need to put in place avoidance and mitigative measures. Combined with the distance between ID94 and the Project, the Applicant considered the potential for an in-combination adverse effect on ecological receptors with ID89 to be unlikely.

The Applicant [APP-080], in view of the proposed measures, considered the effect of the Project on notable fish species, alone and in-combination with other plans and projects, as “*low negative*” and “*not significant*”. In the final SoCGs with NE [REP5-037] and the EA [REP7-030], matters are agreed as to the Applicant’s conclusion.

Based on the information before her, and subject to the measures secured through the Order, the Secretary of State is satisfied that the Project, either alone or in-combination with other plans or projects, will not adversely affect the integrity of the river lamprey, sea lamprey, and bullhead qualifying features of the River Derwent SAC.

### 5.4 Appropriate Assessment conclusion

As the competent authority under the Habitats Regulations for this Application under the Planning Act 2008, the Secretary of State has undertaken an AA in respect of the conservation

objectives of two protected sites to determine whether the Project, either alone or in-combination with other plans or projects, will result in an AEoI.

The Secretary of State has carefully considered all the information available to her, including the recommendations of the ExA, the advice of NE as the SNCB, the views of all other IPs, and the Applicant's case.

Based on the available information before her, and subject to the measures secured through the Order, the Secretary of State is satisfied that the Project, either alone or in-combination with other plans or projects, will not adversely affect the qualifying features of the Lower Derwent Valley SAC and River Derwent SAC.

The Secretary of State is satisfied that further tests set out in the Habitats Regulations are therefore not required.

## 6 Transboundary assessment

The Secretary of State believes that it is important to consider the potential impacts on protected sites in other European Economic Area (“EEA”) states, known as transboundary sites. The ExA also considered the implications for transboundary sites. The conclusions of the ExA’s considerations and the Secretary of State’s own views on this matter are presented below.

On 22 November 2021, following the Applicant’s request for an EIA scoping opinion, PINS undertook a transboundary screening and consultation on behalf of the Secretary of State pursuant to Regulation 32 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and the United Nations Environment Programme Convention on Biological Diversity 1992. A second and final screening was undertaken on 13 December 2022 following submission of the Application documents. PINS considered that the Project was unlikely to have a significant effect either alone or in-combination on the environment in an EEA state.

Potential transboundary impacts were considered in the Applicant’s ES [APP-080] and NSER [AS-018]. The Secretary of State notes that the Applicant considered non-UK protected sites in its Application and concluded that there would be no LSE from the Project alone and in-combination on any transboundary sites.

NE [REP5-037], in their final SoCG, considered that the correct protected sites and qualifying features had been considered in the Applicant’s NSER [AS-018].

The ExA was satisfied that, on the basis of the information provided by the Applicant and NE’s agreement that the correct sites had been considered in the NSER [AS-018], that the Project would not have an LSE on protected sites in any EEA state [ER C.1.14].

The Secretary of State has not been presented with any substantive evidence to demonstrate that transboundary impacts would have an AEol on any protected site in an EEA states. As such, the Secretary of State is satisfied that the Project, either alone or in-combination with other plans or projects, would not have an AEol on any transboundary protected site. The Secretary of State is satisfied that further stages of a transboundary assessment are therefore not required.

## 7 Conclusion

The Secretary of State has carefully considered all information presented within the Application, during the Examination, and the representations made by all IPs, along with the ExA's Recommendation Report.

The Secretary of State concludes that LSEs cannot be excluded at two protected sites, when the Project is considered alone or in-combination with other plans or projects. These LSEs were taken forward to an AA to consider whether the Project would result in an AEoI of the protected sites.

Having considered the information available to her and having made a full assessment of the potential for an AEoI of each of the protected sites for which the potential for LSE was identified, taking into account the views of the Applicant and all IPs, the Secretary of State concludes that an AEoI can be excluded beyond reasonable scientific doubt, subject to the measures secured through the Order.

As such, the Secretary of State is satisfied that there is no significant risk to any protected site and their qualifying features as a result of the Project and considers that no further tests set out in the Habitats Regulations are required.

**Table 1: Protected sites and qualifying features considered in the assessment of LSE.**

Protected site	Qualifying feature(s)	SACOs	Potential for Likely Significant Effects
Lower Derwent Valley SAC	Lowland hay meadows Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> ( <i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i> ) Otter	See footnote <sup>11</sup>	Changes in hydrology (alone and in-combination) Pollution events from accidental release of sediment load and pollutants (alone and in-combination)
River Derwent SAC	Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation Sea lamprey River lamprey Bullhead Otter	See footnote <sup>12</sup>	Changes in hydrology (alone and in-combination) Pollution events from accidental release of sediment load and pollutants (alone and in-combination)

<sup>11</sup> <https://designatedsites.naturalengland.org.uk/TerrestrialAdvicePDFs/UK0012844.pdf>

<sup>12</sup> <https://designatedsites.naturalengland.org.uk/TerrestrialAdvicePDFs/UK0030253.pdf>

## Yorkshire Green Energy Enablement Project Habitats Regulations Assessment

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