



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

YORKSIRE & HUMBER CCS CROSS COUNTRY PIPELINE
APPLICATION

Application by National Grid Carbon Limited

for

Yorkshire and Humber Carbon Capture Transportation and Storage
(CCS) Cross Country Pipeline

East Riding of Yorkshire

Planning Inspectorate Reference: EN070001

**SUMMARY OF FULL WRITTEN REPRESENTATIONS OF NATURAL
ENGLAND**

Dated 18 December 2014

1 Summary written representations

This is a summary of what is contained in Natural England's full Written Representations dated 16 December 2014, which details Natural England's updated position on the issues raised in our Relevant Representations submitted 12th September 2014, taking into account further information subsequently submitted by the applicant.

2 Overview of the sections of Natural England's Full Written Representations

2.1 Section 2 sets out the status and functions of Natural England.

2.2 Section 3 provides information on the legislative framework which applies to this case.

2.3 Section 4 provides information on the policy framework applying to the case.

2.4 Section 5 introduces the statutory nature conservation designations in the area of the proposed development. The relevant protected sites potentially affected are:

- Humber Estuary Special Area of Conservation (SAC)
- Humber Estuary Special Protection Area (SPA)
- Humber Estuary Ramsar
- Flamborough Head SAC
- The Wash & North Norfolk Coast SAC
- Flamborough & Filey Coast potential Special Area of Conservation (pSPA)
- Humber Estuary Site of Special Scientific Interest (SSSI)
- River Hull Headwaters SSSI

2.5 Section 6 sets out Natural England's outstanding issues of concern relating to the above sites.

3 Summary of key issues

3.1 Impacts of the offshore element of the scheme on European designated sites

3.1.1 Natural England does not consider that sufficient information has yet been submitted on the offshore element of the scheme to demonstrate that it would not have an adverse effect on the integrity of the Humber Estuary SAC / SPA, Flamborough Head SAC, The Wash and North Norfolk Coast SAC and Flamborough and Filey Coast pSPA.

3.1.2 We do not currently agree with the conclusions of the No Significant Effects report with regard to the scheme as a whole. However, following agreement with the applicant on a 'roadmap' for the resolution of offshore issues, we are confident that these issues are capable of being resolved through a shadow appropriate assessment.

3.1.3 We advise in section 6.3.1 on the further information required on the offshore scheme.

3.2 River Hull Headwaters SSSI

3.2.1 Natural England advises in section 6.3.1 on the measures to be included in the Code of Construction Practice (CoCP) in order to protect the interest features of the River Hull Headwaters SSSI.

3.3 Biodiversity enhancements

Natural England advises that an appropriate mechanism for securing the enhancements described in Section 5.3 of the Planning Statement, should be secured by a suitably worded requirement in the DCO.

3.4 Great crested newts

Natural England has issued a Letter of No Impediment to confirm that we are satisfied in principle with mitigation proposals to protect great crested newts.



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1. INTRODUCTION

1.1. Purpose and structure of these representations

1.1.1. These Written Representations are submitted in pursuance of rule 10(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 ('ExPR') in relation to an application under the Planning Act 2008 for a Development Consent Order ('DCO') for the Yorkshire and Humber Carbon Capture Transportation and Storage Cross Country Pipeline ('the Project') submitted National Grid Carbon Limited ('the Applicant') to the Secretary of State.

1.1.2. Natural England has already provided a summary of its principal concerns in its Relevant Representations, submitted to the Planning Inspectorate on 12 September 2014. This document comprises a detailed statement of Natural England's views, as they have developed in view of the common ground discussions that have taken place with the Applicant to date. These are structured as follows:

- a. Section 2 introduces the status and functions of Natural England.
- b. Section 3 is an account of the legislative framework.
- c. Section 4 is an account of the policy framework.
- d. Section 5 describes the conservation designations, features and interests that may be affected by the Project and need to be considered.
- e. Section 6 comprises Natural England's submissions in respect of the issues that concern it. This submission cross-refers to, and is supported by, the evidence contained in the Annexes.
- f. Section 7 provides a summary of Natural England's case.
- g. The Annexes contain evidence referred to in the main body of these Representations and the answers to the Examining Authority's written questions which were asked on 25th November 2014.

2. STATUS AND FUNCTIONS OF NATURAL ENGLAND

- 2.1.** Natural England is a statutory body established under the Natural Environment and Rural Communities Act 2006 ('NERC Act'). Natural England is the statutory advisor to Government on nature conservation in England and promotes the conservation of England's wildlife and natural features. It is financed by the Department for Environment, Food and Rural Affairs ('Defra') but is a Non-Departmental Public Body, which forms its own views based on the best scientific evidence available.
- 2.2.** Natural England works for people, places and nature, to enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas; promoting access, recreation and public well-being, and contributing to the way natural resources are managed so that they can be enjoyed now and by future generations.
- 2.3.** Section 2 of the NERC Act provides that Natural England's general statutory purpose is:
'... to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development.'
- 2.4.** Section 2(2) states that Natural England's general purpose includes
- a. promoting nature conservation and protecting biodiversity;
 - b. conserving and enhancing the landscape;
 - c. securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment;
 - d. promoting access to the countryside and open spaces and encouraging open-air recreation; and
 - e. contributing, in other ways, to social and economic well-being through management of the natural environment.
- 2.5.** Natural England is required to keep under review all matters relating to its general purpose,¹ and to provide public authorities with advice where they request this.² Natural England's remit extends to the territorial sea adjacent to England, up to the 12 nautical mile limit from the coastline.³
- 2.6.** Natural England is a statutory consultee in respect of (amongst other matters):

¹ NERC Act, s.3(1).

² NERC Act, s.4(1).

³ NERC Act, s.1(3).

- a. all applications for consent for Nationally Significant Infrastructure Projects which are likely to affect land in England;⁴ and
- b. the environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ('the EIA Regs').⁵
- c. plans or projects that are subject to the requirements of the Conservation of Habitats and Species Regulations 2010 ('the Habitats Regs') or the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007 ('Offshore Regs') which are likely to have a significant effect on European protected sites – that is, sites designated as Special Areas of Conservation ('SACs') and Special Protection Areas ('SPAs') for the purposes of the EU Habitats and Birds Directives – in England;⁶
- d. proposals likely to damage any of the flora, fauna or geological or physiographical features for which a Site of Special Scientific Interest ("SSSI") has been notified pursuant to the Wildlife and Countryside Act 1981 (as amended) ('WCA 1981');⁷
- e. proposals relating to the English territorial sea capable of affecting, other than insignificantly, any of the protected features of a Marine Conservation Zone ('MCZ') or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent, where the Examining Authority believes that there is or may be a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ.⁸

2.7. It is also the Government's policy to consult Natural England in respect of sites listed for the purposes of the Convention on Wetlands of International

⁴Planning Act s.42; Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, reg. 3 and sched.1.

⁵ Regs. 2(1), 8(6), 9(1), 13(2)(b), 17(3)(g), 18(3)(f), 19(3)(e) of the EIA Regs.

⁶ Regulation 61 of the Habitats Regs; regulations 24(1) and (3) and 25(3)(b) of the Offshore Regs.

⁷ Section 28I of the 1981 Act.

⁸ Marine and Coastal Access Act 2009, ss.126(2) and 147(1). The first MCZs are anticipated to be designated in the course of 2013. It is submitted that where an expanse of sea is under consideration for designation as an MCZ this is a material consideration.

Importance especially as Waterfowl Habitat signed at Ramsar on 2 February 1971 ('Ramsar sites'), as if they were European protected sites.⁹

- 2.8.** In addition, Natural England performs duties relating to SSSIs under the WCA 1981, and in relation to European protected sites and species under the Habitats Regulations.

⁹ National Planning Policy Framework (March 2012), para 118; PINS Advice Note 10: Habitats Regulation Assessment for nationally significant infrastructure projects, p.4.

3. LEGISLATIVE FRAMEWORK

3.1. Environmental Impact Assessment

3.1.1. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ('EIA Regs') transposed Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended). That directive and its amending instruments have since been repealed and replaced by consolidated Council Directive 2011/92/EU ('the EIAD'). Development consent cannot lawfully be granted for EIA development unless there has been substantial compliance with the EIA Regs.¹⁰

3.2. Duty to conserve biodiversity

3.2.1. Section 40 of the NERC Act imposes a '*duty to conserve biodiversity*' on public authorities, including members of the Examining Authority and the Secretary of State. In pursuance of this, section 40(1) states:

'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.'

For the purposes of the NERC Act, conservation includes restoring or enhancing a habitat or population of organisms.¹¹ The Secretary of State must in particular have regard to the Convention on Biological Diversity when performing his duty.¹²

3.2.2. Section 41 of the NERC Act requires the Secretary of State to publish a list of the living organisms and types of habitat which in the Secretary of State's opinion are of principal importance for the purpose of conserving biodiversity in England. Section 41(3) states:

- 'the Secretary of State must—
- (a) take such steps as appear to the Secretary of State to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published under this section, or
 - (b) promote the taking by others of such steps.'

¹⁰ *Berkeley v SSE* [2001] 2 AC 603, HL which also concerned the materially identical Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999..

¹¹ NERC Act, s.40(3).

¹² NERC Act, s.40(2).

3.3. European Sites

- 3.3.1.** The Secretary of State and the individual members of the Examining Authority are each a 'competent authority' for the purposes of the Habitats Regulations, with a duty to have regard to the requirements of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds ('Wild Birds Directive').¹³ So far as lies within their powers, a competent authority in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds.¹⁴
- 3.3.2.** The Secretary of State is also the 'appropriate authority' for the purposes of the Habitats Regulations.¹⁵ He must accordingly exercise his functions which are relevant to nature conservation so as to secure compliance with the requirements of the Habitats Directive and Wild Birds Directive.¹⁶ He must furthermore take such steps as he considers appropriate to secure the objective of the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of article 2 of the Wild Birds Directive.¹⁷
- 3.3.3.** The Wild Birds Directive applies to all species of naturally occurring birds in the wild state in the European territory of the UK, including their nests, eggs and habitats.¹⁸ Article 2 of the Wild Birds Directive requires populations of wild birds to be maintained 'at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements'.¹⁹ Article 3 requires Member States, in the light of Article 2, to 'take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats'. Article 5 requires Member States to take the requisite measures to establish a general system of protection for all their wild birds, prohibiting the deliberate

¹³ Habitats Regs, regs 7(1)(a), 3(1), and 9(3). Directive 2009/147/EC has replaced Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

¹⁴ Habitats Regs, reg.9A(8).

¹⁵ Habitats Regs, reg.3(1).

¹⁶ Habitats Regulations, reg. 9(1) and (2).

¹⁷ Habitats Regs, reg 9A(1), (3)

¹⁸ Wild Birds Directive, art.1.

¹⁹ Wild Birds Directive, article 2.

killing or capture, deliberate destruction or removal of nests and eggs, and deliberate disturbance of the birds insofar as this is significant having regard to the objectives of the Directive. Article 4 requires SPAs to be established in respect of particular species, in order to ensure the survival and reproduction of these species in their area of distribution. In respect of SPAs, Article 4 requires that the Member States 'shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article'. It requires that '[o]utside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.' Article 13 provides that application of measures taken pursuant to the Directive may not lead to a deterioration in the present situation as regards the conservation of wild birds.

3.3.4. The Habitats Directive aims to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora. It provides that measures taken pursuant to the Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of community interest.²⁰ Member States, in consultation with the European Commission, must select and designate areas for protection as SACs pursuant to articles 3 and 4 of the Habitats Directive. Together with SPAs, these sites make up the Natura 2000 ecological network, which is supposed to be a coherent ecological European network that enables 'the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range'²¹.

3.3.5. Article 6 of the Habitats Directive applies both to SACs and to SPAs.²² Article 6(2) requires that Member States shall take appropriate steps to avoid, in the European sites, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive. Article 6(3) requires that any project not directly connected with or necessary to the management of the European site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's

²⁰ Habitats Directive, art.2.

²¹ Habitats Directive, art.3(1).

²² Habitats Directive, art. 6 applies to SACs and art.7 applies it to SPAs designated under the Wild Birds Directive.

conservation objectives. In the light of the conclusions of the assessment of the implications for the site the competent national authorities shall agree to the project only after having ascertained that it will not adversely affect the integrity of the site concerned, unless it meets the enumerated criteria for derogation.

- 3.3.6.** If an adverse effect on the integrity of the site cannot be ruled out, then the effect of Article 6(4) is that the project may only be carried out where (i) there are no alternative solutions, (ii) it must go ahead for imperative reasons of overriding public interest, including reasons of a social or economic nature; and (iii) all compensatory measures necessary to protect the overall coherence of the Natura 2000' network are taken. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised as 'imperative reasons of overriding public importance' are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or such other matters contained in an opinion of the European Commission.²³
- 3.3.7.** SACs and SPAs are protected as European sites in inshore waters off England (up to 12 nautical miles) by the Habitats Regs and in offshore waters (i.e. outside 12 nautical miles) by the Offshore Regs, which transpose the relevant parts of the Habitats Directive into domestic law. The provisions of Article 6 of the Habitats Directive which are noted above are found at regulations 61, 62 and 66 of the Habitats Regs and regulations 25, 26 and 30 of the Offshore Regs. In determining these applications, the Secretary of State will be acting as a competent authority for the purposes of those Regulations.
- 3.3.8.** The Regulations describe a sequence of steps to be taken by the competent authority in respect of a European site (including SPAs of relevance with regards these applications) when deciding whether to authorise a project. Those steps are:

Step 1 Consider whether the project is directly connected with or necessary to the management of the site?²⁴ If not—

²³ Regulations 62 and 66 of the Habitats Regulations, transposing Article 6(4) of the Habitats Directive.

²⁴ Under regulation 61(1)(b) of the Habitats Regs or reg. 25(1)(c) of the Offshore Regs.

Step 2 Consider²⁵ whether the project is likely to have a significant effect on the site, either alone or in combination with other plans or projects. If such an effect cannot be excluded –

Step 3 Make an appropriate assessment of the implications for the site in view of its current conservation objectives.²⁶ In so doing, it is mandatory to consult Natural England²⁷ and have regard to its representations, and optional to obtain the opinion of the general public.²⁸ The competent authority is empowered to require the Applicant to provide information for the purposes of the appropriate assessment, or to enable the authority to determine whether such an assessment is required.²⁹

Step 4 Consider³⁰ whether the project will adversely affect the integrity of the site, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the ‘Integrity Test’).

Step 5 Reject the project, unless it is ascertained that the project will not adversely affect the integrity of the site.³¹

Step 6 If the project fails the Integrity Test in respect of the site, consider, whether one is satisfied that there is no alternative solution.³² If not so satisfied, reject the project; but if so satisfied, proceed to steps 7 and 8.

Step 7 Consider whether one is satisfied that the project must be carried out for imperative reasons of overriding public interest.³³ If not, reject the application. If so, proceed to Step 8.

Step 8 Consider whether one can secure that compensatory measures are taken which would be necessary to secure that the overall coherence of Natura 2000 is protected. If not, reject the

²⁵ Under regulation 61(1)(a) of the Habitats Regs or reg.25(1)(b) of the Offshore Regs.

²⁶ Under regulations 61(1) of the Habitats Regs.or 25(1) of the Offshore Regs.

²⁷ under regulations 61(3) of the Habitats Regs or 25(3)(b) of the Offshore Regs.

²⁸ under regulation 61(4) of the Habitats Regs or 25(3)(f) of the Offshore Regs.

²⁹ By regulation 61(2) of the Habitats Regs or 25(2) of the Offshore Regs.

³⁰ Pursuant to regulation 61(5) and (6) of the Habitats Regs or 25(4) and (5) of the Offshore Regs.

³¹ Applying regulation 61(5) of the Habitats Regs, subject to regulation 62, or reg 25(4) of the Offshore Regs subject to reg.26.

³² in accordance with regulation 62(1) of the Habitats Regs or 26(1) of the Offshore Regs.

³³ in accordance with regulation 62(1) of the Habitats Regs or 26(1) of the Offshore Regs.

application; if so, accept the application subject to requirements securing that the necessary compensatory measures will be implemented in the appropriate timeframe.³⁴

- 3.3.9.** The Directives are both to be construed purposively in the light of Article 191 of the Treaty on the Functioning of the European Union ('TFEU'). Article 191(1) TFEU provides that 'Union policy on the environment shall contribute to the pursuit of the...objectives [of] preserving, protecting and improving the quality of the environment'; and Article 191(2) provides that Union policy on the environment shall aim at a high level of protection, and shall be based on the precautionary principle and on the principle that preventive action should be taken.
- 3.3.10.** The case law of the Court of Justice of the European Union has established the following points:
- a. Articles 6(2) and 6(3) are aimed at achieving the same level of protection. The Habitats Directive therefore requires that Member States take systematic and effective measures pursuant to Article 6(3) which guarantee the avoidance in fact of significant deterioration of the habitats or disturbance of the species for which SPAs and SACs have been designated.³⁵
 - b. 'Article 6(3) of [the] Directive makes the requirement for an appropriate assessment of the implications of a plan or project conditional on there being a probability or a risk that that plan or project will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned... It follows that the Habitats Directive requires that any plan or project undergo an appropriate assessment of its implications if it cannot be excluded on the basis of objective information that that plan or project will have a significant effect on the site concerned'.³⁶
 - c. Under Article 6(3) of the Habitats Directive, 'an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all aspects of the plan or

³⁴ As required by regulation 66 of the Habitats Regs or 30 of the Offshore Regs.

³⁵ CJEU, Case C-241/08 *Commission v France* at paras 30-36; Case C-535/07 *Commission v Austria* at paras 57-58.

³⁶ CJEU Case C-418/04 *Commission v Ireland* at paras 226 to 227; Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee v Staatsecretaris van Landbouw, Natuurbeheer en Visserij* at paras 43-45

project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field'.³⁷

- d. 'An assessment made under Article 6(3) of the Habitats Directive cannot be regarded as appropriate if it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the SPA concerned'.³⁸

3.4. Ramsar Convention

3.4.1. The UK is a party to the 1971 Convention on Wetlands of International Importance, done at Ramsar, Iran ('the Ramsar Convention').

3.4.2. Article 2(1) of the Convention provides that 'Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance'.

3.4.3. Article 4 of the Convention provides:

1. Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.

2. Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

3. The Contracting Parties shall encourage research and the exchange of data and publications regarding wetlands and their flora and fauna.

4. The Contracting Parties shall endeavour through management to increase waterfowl populations on appropriate wetlands.'

³⁷ CJEU Case C-127/02 *Waddenzee* at para 61.

³⁸ CJEU Case C-404/09 *Commission v Spain* at para 100; cf case C-304/05 *Commission v Italy* [2007] ECR I-7495, paras 58-59, 67-70.

- 3.4.4.** The Government designates Ramsar sites in accordance with the criteria set out in the Convention, in recognition of the international importance of these sites as a wetland wildlife habitat.
- 3.4.5.** In accordance with *Government Circular: Biodiversity and Geological Conservation Statutory Obligations and their Impact within the Planning System* (ODPM 06/2005), and the *National Planning Policy Framework* (2012), paragraph 118, Ramsar sites are subject to the same procedures described in the preceding section (in relation to European sites) as a matter of UK Government Policy, in order to assist the Government in fully meeting its obligations under the Ramsar Convention.

3.5. Sites of Special Scientific Interest (SSSIs)

- 3.5.1.** SSSIs are designated as such by Natural England under section 28 of the WCA 1981, where we are of the opinion that land is of special interest by reason of any of its flora, fauna, or geological or physiological features.
- 3.5.2.** Section 28G of the WCA 1981 places legal obligations on public authorities in relation to SSSIs. These authorities are known as ‘section 28G authorities’, and the definition given at s.28G(3) embraces all public office-holders including the Secretary of State and the Examining Authority.
- 3.5.3.** An authority to whom section 28G applies has a duty in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiological features by reason of which a SSSI is of special interest to:

‘take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiological features by reason of which the site is of special scientific interest.’

- 3.5.4.** In addition, where the permission of a section 28G authority is needed before proposed operations may be carried out, the section 28G authority must, in accordance with section 28I(5) of the WCA 1981, take any advice received from Natural England into account:
- (a) in deciding whether or not to permit the proposed operations; and
 - (b) if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission.

3.5.5. ‘Permission’ is defined so as to include any kind of consent or authorisation.³⁹ As the Applicant requires development consent from the Secretary of State in order to proceed with its proposals, and as the Secretary of State is a section 28G authority, the duties under section 28I(5) apply to the Secretary of State.⁴⁰

3.5.6. Section 35 of the WCA 1981 empowers Natural England to declare as a ‘National Nature Reserve’ (‘NNR’) any land which is managed as a nature reserve and is of national importance. There is no additional protection for these over and above SSSI, European or Ramsar site status.

3.6. European Protected Species

3.6.1. Regulation 9(5) of the Habitats Regs, headed ‘Exercise of functions in accordance with the Habitats Directive’, stipulates that:

‘a competent authority, in the exercising of any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions’.

The Examining Authority and Secretary of State are both ‘competent authorities’ by virtue of reg.7(1), which includes any person holding a public office.

3.6.2. In relation to species of animals and plants listed in Annex IV of the Habitats Directive, article 12 of the Directive provides that the UK must take the requisite measures to ensure that they are subject to a system of strict protection.

3.6.3. In relation to the animal species, the system must in particular prevent the deliberate capture or killing of specimens of these species in the wild; deliberate disturbance of these species; deliberate destruction or taking of eggs from the wild; and deterioration or destruction of breeding sites or resting places. Disturbance or destruction may be indirect, for instance through noise or light pollution, or loss of habitat.⁴¹

³⁹ WCA 1981, s.28I(7).

⁴⁰ Natural England accepts that the notice requirements of section 28I(2) to (4) have been satisfied for the purposes of the Secretary of State’s determination of the planning applications at issue here.

⁴¹ CJEU Case C-103/00, *Commission v Greece*, judgment para 34 and Opinion of Léger AG delivered on 25 October 2001, paras 46, 56 and 57; *R(Morge) v Hampshire CC* [2010] EWCA Civ 608 at [49]. [2011] UKSC 2 at [19].

- 3.6.4.** The plant species must be protected in particular from deliberate picking, collecting, cutting, uprooting or destruction in their natural range in the wild.
- 3.6.5.** Article 16 of the Habitats Directive provides that this strict protection may be derogated from only where (i) there is no satisfactory alternative, (ii) the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, and (iii) the purpose is (a) protecting wild fauna and flora and conserving natural habitats; (b) preventing serious damage to crops, livestock, forests, fisheries and water and other types of property; (c) public health and safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment; (d) research, education, and repopulating and re-introducing these species; or (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.
- 3.6.6.** Regulation 41 of the Habitats Regs and the provisions of the WCA 1981 make it a criminal offence to engage in the behaviour prohibited by the Habitats Directive. However, prohibitions enforced by penalties for infractions are not in themselves adequate to implement the Directive if they will not prevent significant destruction or disturbance taking place in fact: 'such protection requires that individuals be prevented in advance from engaging in potentially harmful activities'.⁴²
- 3.6.7.** The Court of Justice of the European Union has accordingly ruled that Member States must not only adopt a comprehensive legislative framework but also to implement concrete and specific protection measures that are coherent, co-ordinated and preventive in nature.⁴³ Such a system of strict protection must enable the effective avoidance of deterioration or destruction of breeding sites or resting places caused by development.⁴⁴ Strict protection must be enforced even if the population of the species is not declining.⁴⁵

⁴² CJEU, Case C-418/04 *Commission v Ireland* at para 208.

⁴³ CJEU Case C-183/05, *Commission v Ireland*, paras 29-30.

⁴⁴ CJEU Case C-383/09 *Commission v France*, opinion of Advocate-General Kokott at para 89; judgment at paras 21, 35, 37.

⁴⁵ CJEU Case C-103/00 *Commission v Greece* para 31; CJEU Case C-518/04 *Commission v Greece*, para 21.

3.6.8. The Secretary of State should follow the guidance in paragraphs 99 and 116 of Circular 06/2005, and take care to ensure that any disturbance of protected species, including harm to their habitats, food-sources, resting-places or breeding sites, is avoided unless he considers that the derogation criteria are likely to be met, in which case he should require any necessary licence to be obtained before development commences.⁴⁶

⁴⁶ That was the approach endorsed by the High Court in *R(Woolley) v East Cheshire DC* [2010] Env. L.R. 5 at [27]-[28]. In *Morge v Hampshire CC*, the Supreme Court appears to have thought that it would not be unlawful to grant permission for a development unconditionally, unless it were thought unlikely that the criteria would be met. This was on the premise that it was sufficient for the prohibited conduct to be subject to criminal penalties if no species licence were obtained. However, the CJEU authorities cited above - which the Supreme Court did not consider in that case – make it clear that a preventive approach must be taken by the planning authority. It would be unsafe for the Secretary of State to grant consent without ensuring, so far as he can, that the requirements of the Directive would be met.

4. POLICY FRAMEWORK

Natural England's approach to addressing issues such as 'integrity', 'coherence', and 'disturbance' is informed by relevant national and European policy and guidance documents. Significant passages from these documents have been summarised or set out verbatim below.

The documents referred to below are statements of overarching policy which are central and applicable to planning decisions affecting biodiversity, such that it is presumed that the Examining Authority has copies of them, and it has not been thought necessary to include them as Annexes to these Written Representations. However, should the Examining Authority require copies of the documents referred to, Natural England would be pleased to provide them.

4.1. National Policy Statements

The Overarching National Policy Statement for Energy (EN1) states in Section 5.3.4:

The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

4.2. National planning policy and guidance on protected sites and species

4.2.1. Paragraph 118 of the National Planning Policy Framework states:

opportunities to incorporate biodiversity in and around developments should be encouraged

4.2.2. Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (ODPM 06/2005) is relevant here and provides administrative guidance on the application of the law relating to planning and nature conservation as it applies in England.

4.2.3. The Examination Authority is also reminded of the Planning Inspectorate's own *Advice note ten: Habitat Regulations Assessment* (April 2012).

4.3. European Commission guidance

4.3.1. The European Commission has produced guidance on the protected sites and species regimes. This includes the following relevant guidance:

- a. *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (2000);*
- b. *EC (2001) Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC (November 2001)*
- c. *Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC (2007);*
- d. *The implementation of the Birds and Habitats Directives in estuaries and coastal zones (2011)*

5. CONSERVATION DESIGNATIONS, FEATURES AND INTERESTS THAT COULD BE AFFECTED BY THE PROPOSED PROJECT

The following is a brief summary of the interest features of the relevant designated areas of concern in this matter. Designation citations and maps are included in Annexes A and B.

5.1. International conservation designations

5.1.1. Humber Estuary SAC: the SAC covers 36,657.15ha in the unitary authorities / counties of City of Kingston-upon-Hull, East Riding of Yorkshire, Lincolnshire, North East Lincolnshire and North Lincolnshire

5.1.2. The Humber Estuary SAC was designated by the Secretary of State for Environment, Food and Rural Affairs under the Habitats Directive on 10 December 2009.

5.1.3. The site is designated under Article 4(4) of the Habitats Directive as it hosts the following habitats listed in Annex I:

- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*).
- Coastal lagoons⁴⁷.
- Dunes with *Hippophae rhamnoides*.
- Embryonic shifting dunes.
- Estuaries.
- Mudflats and sandflats not covered by seawater at low tide.
- Fixed dunes with herbaceous vegetation ('grey dunes')*.
- *Salicornia* and other annuals colonising mud and sand.
- Sandbanks which are slightly covered by sea water all the time.
- Shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes').

5.1.4. The site is designated under Article 4(4) of the Habitats Directive as it hosts the following species listed in Annex II:

- Sea Lamprey (*Petromyzon marinus*).
- River lamprey (*Lampetra fluviatilis*).
- Grey seal (*Halichoerus grypus*).

⁴⁷ A sub-set of the Annex I habitat types are defined as being 'priority' because they are considered to be particularly vulnerable and are mainly, or exclusively, found within the European Union (Article 1d). The importance of these priority habitat types is emphasised at several places in the Directive (Articles 4 and 5 and Annex III), not only in terms of the selection of sites, but also in the measures required for site protection (Article 6) and surveillance (Article 11).

5.1.5. The onshore scheme is located approximately 2.4km from the site at its closest point. The offshore scheme is located approximately 50km north of the site.

5.1.6. Humber Estuary SPA: The Humber Estuary was first classified by the UK Government as an SPA under the provisions of the Birds Directive on 28 July 1994 as the Humber Flats, Marshes and Coast (Phase 1) SPA. The extended and renamed Humber Estuary SPA was classified on 31 August 2007.

5.1.7. The SPA covers 37,630.24ha in the unitary authorities / counties of City of Kingston-upon-Hull, East Riding of Yorkshire, Lincolnshire, North East Lincolnshire and North Lincolnshire.

5.1.8. The SPA is classified under Article 4.1 of the Birds Directive as it is used regularly by 1% or more of the Great Britain populations of the following species listed in Annex I in any season:

- Avocet *Recurvirostra avosetta* – wintering
- Bittern *Botaurus stellaris* – wintering
- Hen harrier *Circus cyaneus* – wintering
- Golden plover *Pluvialis apricaria* – wintering
- Bar-tailed godwit *Limosa lapponica* – wintering
- Ruff *Philomachus pugnax*- passage
- Bittern *Botaurus stellaris*- breeding
- Marsh harrier *Circus aeruginosus* – breeding
- Avocet *Recurvirostra avosetta* – breeding
- Little tern *Sterna albifrons* – breeding

5.1.9. The site is classified under Article 4.2 of the Birds Directive as it is used regularly by 1% or more of the biogeographical populations of the following regularly occurring migratory species (other than those listed in Annex I) in any season:

- Shelduck *Tadorna tadorna* – wintering
- Knot *Calidris canutus* – wintering
- Dunlin *Calidris alpina* – wintering
- Black-tailed godwit *Limosa limosa* – wintering
- Redshank *Tringa totanus* – wintering
- Knot *Calidris canutus* - passage
- Dunlin *Calidris alpina* - passage

- Black-tailed godwit *Limosa limosa* - passage
- Redshank *Tringa totanus* - passage

5.1.10. The site is classified under Article 4.2 of the Birds Directive as it is used regularly by over 20,000 waterbirds (this assemblage includes all waterbirds except non-native or introduced species).

5.1.11. Humber estuary Ramsar site: The Humber Estuary was first designated by the UK Government as a Ramsar site under the Convention on Wetlands of International Importance on 28 July 1994 as the Humber Flats, Marshes and Coast (Phase 1) Ramsar site. The extended and renamed Humber Estuary Ramsar site was designated on 31 August 2007.

5.1.12. The Ramsar site covers 37,987.80ha in the unitary authorities / counties of City of Kingston-upon-Hull, East Riding of Yorkshire, Lincolnshire, North East Lincolnshire and North Lincolnshire.

5.1.13. The site is listed for the following criteria:

Criterion 1: The site contains a representative, rare, or unique example of natural or near-natural wetland types found within the appropriate biogeographic region:

The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and coastal brackish/saline lagoons.

Criterion 3: The site supports populations of animal species important for maintaining the biological diversity of a particular biogeographic region:

The Humber Estuary Ramsar site supports a breeding colony of grey seals *Halichoerus grypus* at Donna Nook. It is the second largest grey seal colony in England and the furthest south regular breeding site on the east coast. The dune slacks at Saltfleetby-Theddlethorpe on the southern extremity of the Ramsar site are the most north-easterly breeding site in Great Britain of the natterjack toad *Bufo calamita*.

Criterion 5: The site regularly supports 20,000 or more waterbirds:

In the non-breeding season, the area regularly supports 153,934 individual waterbirds (5 year peak mean 1996/97 – 2000/01).

Criterion 6: The site regularly supports 1% of the individuals in a population of one species or subspecies of waterbird in any season:

Shelduck *Tadorna tadorna* – wintering
Golden plover *Pluvialis apricaria* - wintering
Knot *Calidris canutus* – wintering
Dunlin *Calidris alpina* – wintering
Black-tailed godwit *Limosa limosa* – wintering
Bar-tailed godwit *Limosa lapponica* – wintering
Redshank *Tringa tetanus* – wintering
Golden plover *Pluvialis apricaria* - passage
Knot *Calidris canutus* – passage
Dunlin *Calidris alpina* – passage
Black-tailed godwit *Limosa limosa* – passage
Redshank *Tringa tetanus* - passage

- 5.1.14. Flamborough Head SAC:** the site lies close to the boundary between two North Sea waterbodies and encompasses a large area of hard and soft chalk cliffs which extend seaward as bedrock, boulder and cobble reefs further than at other site in the UK.
- 5.1.15.** The site was designated by the Secretary of State for Environment, Food and Rural Affairs under the Habitats Directive on 1 April 2005.
- 5.1.16.** The site is designated under Article 4(4) of the Habitats Directive as it hosts the following habitats listed in Annex I:
- Reefs.
 - Submerged or partially submerged sea caves.
 - Vegetated sea cliffs of the Atlantic and Baltic coasts.
- 5.1.17. The Wash and North Norfolk Coast SAC:** The Wash is the largest embayment in the UK. It is connected via sediment transfer systems to the north Norfolk coast. Together, the Wash and North Norfolk Coast form one of the most important marine areas in the UK and European North Sea coast, and include extensive areas of varying, but predominantly sandy, sediments subject to a range of conditions.

- 5.1.18.** The site was designated by the Secretary of State for Environment, Food and Rural Affairs under the Habitats Directive on 1 April 2005.
- 5.1.19.** The site is designated under Article 4(4) of the Habitats Directive as it hosts the following habitats listed in Annex I:
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*).
 - Submerged or partially submerged sea caves.
 - Vegetated sea cliffs of the Atlantic and Baltic coasts.
 - Coastal lagoons.
 - Large shallow inlets and bays.
 - Mediterranean and thermo-Atlantic halophilous scrubs (*Sarcocornetea fruticosi*) (Mediterranean saltmarsh scrub).
 - Mudflats and sandflats not covered by seawater at low tide (intertidal mudflats and sandflats).
 - Reefs.
 - *Salicornia* and other annuals colonising mud and sand. (Glasswort and other annuals colonising mud and sand).
 - Sandbanks which are slightly covered by sea water all the time (subtidal sandbanks).
- 5.1.20.** The site is designated under Article 4(4) of the Habitats Directive as it hosts the following species listed in Annex II:
- Common seal *Phoca vitulina*
 - Otter *Lutra lutra*
- 5.1.21. Flamborough & Filey Coast pSPA:** the site is located on the Yorkshire coast between Bridlington and Scarborough. It includes the RSPB reserve at Bempton Cliffs, the Yorkshire Wildlife Trust Flamborough Cliffs nature reserve and the East Riding of Yorkshire Council Flamborough Head Local Nature Reserve.
- 5.1.22.** The site qualifies under article 4.2 of the Directive (79/409/EEC) for supporting over 1% of the biogeographical population of four regularly occurring migratory species:
- Black-legged kittiwake *Rissa tridactyla*
 - Northern gannet *Morus bassanus*
 - Common guillemot *Uria aalge*
 - Razorbill *Alca torda*
- 5.1.23.** The site qualifies under article 4.2 of the Directive (2009/147/EC) as it is used regularly by over 20,000 seabirds in any season. During the breeding

season, the area regularly supports 215,750 individual seabirds including: black-legged kittiwake, northern gannet, common guillemot, razorbill, northern fulmar *Fulmarus glacialis* (2008-2012).

5.2. National conservation designations

5.2.1. Humber Estuary Site of Special Scientific Interest (SSSI): The Humber Estuary was previously notified as seven biological and geological SSSIs covering the intertidal and terrestrial periphery of the estuary.

5.2.2. The Humber Estuary SSSI was notified on 3 February 2004 and includes all seven of these SSSIs and also enlarges the area notified to include the entire estuary and the associated features of interest. This extends from the limit of saline intrusion on the rivers Ouse and Trent to the mouth of the estuary, as well as some terrestrial areas that support some of the estuarine features. The enlarged area also includes the geomorphological interest at Spurn. A whole estuary approach to this notification allows for the dynamic intertidal and subtidal areas to change naturally and remain within the site boundary.

5.2.3. The site is designated for the following features:

- **Estuary** - The Humber Estuary is a large macro-tidal coastal plain estuary with high suspended sediment loads, which feed a dynamic and rapidly changing system of accreting and eroding intertidal and subtidal mudflats, sandflats, saltmarsh and reedbeds.
- **Saline lagoons** - Within the Humber Estuary SSSI there are good examples of four of the five physiographic types of saline lagoon.
- **Sand dunes** - The sand dunes within the Humber Estuary are features of the outer estuary on both the north and south banks particularly on Spurn and along the Lincolnshire coast south of Cleethorpes. Examples of both strandline, foredune, mobile, semi-fixed dunes, fixed dunes and dune grassland occur on both banks of the estuary and along the coast.
- **Standing waters** - The most extensive area of standing waters on the Humber occurs at Barton and Barrow. The complex of disused clay pits vary in size and salinity, and are a mosaic of open waters. Similar pits occur at other locations on the estuary, such as at Faxfleet and Haverfield Pits.

- **Geology and geomorphology** - Approximately one kilometre of the cliff and foreshore at South Ferriby, on the southern shore of the Humber provides exposures of Pleistocene sediments resting upon chalk. Spurn is an outstanding example of a dynamic spit system, very unusual, if not unique in Europe, in that the massive supply of sediment resulting from the erosion of the Holderness coast to the north has enabled it to extend across the mouth of a macro-tidal estuary.
- **Wintering and passage waterfowl species** - The estuary regularly supports 22 species of wintering waterfowl in nationally important numbers. In addition, nine species of passage waders regularly occur in nationally important numbers on the Humber Estuary.

5.2.4. River Hull Headwaters SSSI: The headwaters of the River Hull are nationally important as the most northerly chalk stream system in Britain. Also of interest within the site are areas of riverside grassland, woodland and fen; remnants of habitats formerly more widespread but now limited in distribution due to agricultural and urban development.

5.2.5. The site is designated for the following features:

- Chalk streams with a variety of aquatic vegetation dependent upon flow rate.
- Areas of species-rich wet grassland and fen.
- Wet woodland including extensive areas of alder and willow carr.
- Invertebrate fauna typical of northern chalk streams.
- A diverse breeding bird community in the river valley.

5.3. European Protected Species

5.3.1. Great crested newt: Great crested newts, their breeding sites and resting places are protected under the Conservation of Habitats & Species Regulations 2010 (as amended). Although the great crested newt is still widespread in Britain, it has suffered a major decline over the last century and much of its habitat is fragmented by unfavourable land use. The species may be abundant locally in parts of lowland England, while in much of the country it is scarce. Many populations are declining gradually. Only a small proportion of breeding sites (thought to number in the tens of thousands) have been recorded.

5.3.2. The great crested newt was listed as a priority species under the UK BAP. The UK Post-2010 Biodiversity Framework succeeds the UK BAP

partnership, though the lists of priority species agreed under the UK BAP still form the basis of much biodiversity work in the UK.

6. NATURAL ENGLAND'S CONCERNS AND ADVICE

6.1. The principal issues

- 6.1.1.** Natural England is not satisfied that it can be demonstrated beyond reasonable scientific doubt that the offshore element of the project would not have an adverse effect on the integrity of the Humber Estuary SAC / SPA / Ramsar site, the Wash and North Norfolk Coast SAC, Flamborough and Filey Coast pSPA or the Flamborough Head SAC.
- 6.1.2.** Natural England advises that the Code of Construction Practice is amended to include measures to ensure that there will be no impact on the interest features of the River Hull Headwaters SSSI, as detailed in Section 6.3.
- 6.1.3.** Natural England advises that measures for enhancing biodiversity, and the mechanisms for securing such measures, should be included as a requirement in the Development Consent Order.

6.2. Impacts of the offshore element of the scheme on European designated sites

- 6.2.1.** Natural England advised in its relevant representations that there are a number of matters relating to the offshore element of the scheme that have not been satisfactorily resolved as part of the pre-application process. This must be addressed by National Grid and the Examining Authority as part of the examination and consenting process before development consent can be granted. With some uncertainty as to the detail of the offshore pipeline construction and potential impacts on designated sites, we do not consider that sufficient information has been made available in order to determine that likely significant effects of the offshore element of the scheme can be ruled out, either alone or in-combination with other plans and projects. We advised that the proposal should proceed to the second stage of the Habitats Regulations Assessment process and that a Habitats Regulations Assessment report is produced in order to inform an Appropriate Assessment.
- 6.2.2.** Natural England has reviewed the additional information submitted by the applicant in the revised No Significant Effects Report on 14th November 2014. Whilst we agree with the conclusions of the report with regard to the onshore scheme, we consider that further information will need to be added to the report regarding the offshore scheme when it becomes available. We therefore do not agree with the conclusions of the report with regard to the scheme as a whole.

6.2.3. We have agreed with the applicant a clear 'roadmap' whereby further information will become available on the offshore scheme during the examination period. We are therefore confident that the issues set out below are capable of being resolved, should the information be made available in a timely manner to allow Natural England and other consultees to review it.

6.2.4. The potential impacts that we remain concerned about, and further information required in order to inform the Appropriate Assessment is set out below.

6.2.5. Coastal processes and sediment transport

The installation of the intertidal pipeline and the use of rock armouring may impact on sediment transport and physical coastal processes, with potential impacts on habitats and bird species which are interest features of the Humber Estuary SAC, SPA and Ramsar site. Further information is required as follows:

- A comprehensive desk-based review to show what components of the offshore scheme may cause changes to sediment transport, physical coastal processes and potential impacts to designated sites. In particular attention should be paid to the potential effects of any use of rock armouring. The review should scope the potential need for coastal processes modelling if required.
- The ideal burial depth of pipeline (subsea geology permitting) with particular focus on the nearshore and intertidal zones.
- Confirmation of intertidal pipeline installation methods and duration of works.
- A preliminary estimate or worst case scenario of the need for rock armouring should be provided, as a remedial measure for pipeline scour and subsequent exposure.
- An assessment of the suitability of limiting rock armouring to seabed level only.
- The material to be used for any rock armouring, and method of deployment.

6.2.6. Disturbance to marine mammals

Installation, operation and decommissioning of the normally unmanned installation may impact on marine mammals, specifically grey seals which are a qualifying feature of the Humber Estuary SAC and Ramsar site, and harbour seals which are a qualifying feature of The Wash and North Norfolk Coast SAC. Further information is therefore required on noise levels and any other potential effects upon marine mammals during installation,

operation and decommissioning of NUI, and the need for a marine mammal observer and suspension of works.

6.2.7. Disturbance to seabirds

Elements of the offshore scheme may also impact on bird species which are qualifying features of the Flamborough and Filey Coast pSPA. The information in Table 5.4 and Appendix 5.4.12 of the No Significant Effects Report refers to foraging activity of the interest features of the pSPA. However, potential impacts will also need to be considered on young guillemot and razorbill which are flightless and therefore sensitive to disturbance during the anticipated pipeline installation period in June / July. The source of the data presented in Table 1 and the figures in Appendix 5.4.12 should also be clarified.

6.2.8. Further information is also required to enable the following to be included as part of the Appropriate Assessment:

- Construction, operation and decommissioning of the offshore scheme may have effects on the qualifying features of European sites, in combination with other plans and projects.
- Details of monitoring, control measures and safeguards to ensure impacts are as predicted.

6.3. Other advice

6.3.1. River Hull Headwaters SSSI

Natural England recommended in its relevant representations that a requirement should be included in the DCO relating to the flow rate below which dewatering should not take place, as measured at the gauging station on West Beck. We have since received further correspondence from the applicant, and we note that Requirement 14 of the Draft Development Consent Order states that work must be carried out in accordance with the Code of Construction Practice (CoCP). We therefore consider that including the following measures in the CoCP will ensure that interest features of the SSSI can be adequately protected:

- Construction at the West Beck (River Hull) crossing will not take place during the period October to March, when the lowest flows occur.
- If the flow rate in West Beck drops below 0.368 cumecs, the Beck will be recharged using water from the water management scheme just upstream of the proposed pipeline crossing to ensure no further reduction in flow rate.

6.3.2. Biodiversity enhancements

Natural England advised in our relevant representations that the scheme provides significant opportunities for enhancement of biodiversity, in accordance with Paragraph 118 of the NPPF, Section 5.3.4 of NPS (EN1), and Section 40 of the Natural Environment and Rural Communities Act (2006) (see sections 3 and 4 for further details). We advise that the enhancement measures set out in Section 5.3 of the Planning Statement, in particular those relating to Snakeholme Pastures as set out in Section 5.3.30, should be secured by a suitably worded requirement in the DCO. The requirement should also set out an appropriate mechanism for securing such measures.

6.3.3. Great crested newts

Natural England has issued a Letter of No Impediment to confirm that on the basis of information provided, we are satisfied in principle with mitigation proposals to protect great crested newts. However, a licence cannot be issued until development consent is granted.

6.4. Conclusion

Natural England is satisfied that the onshore element of the scheme will not have an adverse effect on the integrity of any European sites. We are also satisfied that impacts on the River Hull Headwaters can be avoided by measures to be included in the Code of Construction Practice, secured by DCO requirement, and that adequate mitigation measures have been proposed to protect great crested newts.

We consider that insufficient information has been submitted at this stage to determine that the offshore element of the scheme will not have an adverse effect on the integrity of a number of sites. However, we have discussed these issues with the applicant and have agreed a 'roadmap' for the resolution of offshore issues. We are therefore confident that all issues can be resolved during the examination process, provided that further information is made available in a timely manner.

7. ANSWERS TO THE EXAMINING AUTHORITY'S WRITTEN QUESTIONS

7.1. The questions received

7.1.1. In its Rule 8 letter dated 25th November 2014, the Examining Authority asked Natural England a number of questions. These are set out, along with the answers, in the table provided at Annex C. The table cross-refers to passages in these Written Representations and their Annexes.

8. ANNEXES

ANNEX A: Designated site maps

Please see separate attachments.

ANNEX B: Designated site conservation objectives and citations

Please see separate attachments.

ANNEX C: Schedule of Natural England's responses to the Examining Authority's initial questions.

Q 3.1: Section 13 of ES chapter 9 identifies 'Difficulties Encountered Undertaking the Assessment' and states that not all land was surveyed as access was not available to all land. Para 13.1.2 asserts that "enough of the Application Boundary has been surveyed to be able to undertake a robust assessment". Is NE content that although some areas were not accessible for ecological surveys that the ES has presented sufficient ecological baseline information?

Natural England is satisfied that sufficient information has been presented to make a robust assessment.

Q 3.12: Are the local planning authorities, the EA, NE and English Heritage (EH) content that the CoCP adequately ensures all the required mitigation measures can be delivered and enforced?

Natural England is satisfied that all mitigation measures outlined in the CoCP can be delivered and enforced.

Q3.20: Can the applicant confirm whether the monitoring referred to in ES Chapter 9 Section 10 has been agreed with relevant consultees? Are interested parties (including NE, EA, Yorkshire Wildlife Trust and the local authorities) content with the monitoring proposals?

Natural England is content with the monitoring proposals.

Q3.21 Can NE confirm whether it considers any additional mitigation measures for great crested newts are required within the CoCP and may a letter of no impediment now be issued?

Natural England does not consider that any additional mitigation measures are required, and a letter of no impediment has now been issued.

Q3.24 There are two types of matrices provided by the applicant for each European site; the first being 'screening matrices' which summarise each of the applicant's screening stages described above, and the second being 'summary matrices' which follow the format advised in the Planning Inspectorate's Advice Note 10 and presents the overall outcome of the screening. Can NE confirm that all of the correct sites and

features have been considered in the applicant's NSER? Does NE agree with the content and conclusions of the screening matrices? Can the applicant provide the Planning Inspectorate with a full set of screening matrices in a Word format?

Natural England agrees with the sites and features that have been considered, and with the content and conclusions of the screening matrices, regarding the onshore element of the scheme. However, as outlined in Section 6.2, we consider that further information is still required in order to determine whether the offshore element of the scheme will have an adverse effect on the integrity of European sites. We therefore do not currently agree with the conclusions of the NSER with regard to the scheme as a whole. Please refer to Section 6.2 for further details.

Q3.25 *Appendix 5.4.12 to the NSER details the distribution and foraging ranges of bird species from Flamborough Head and Bempton Cliffs SPA and Flamborough Head and Filey Coast pSPA. It has been used as evidence to support the conclusion of no Likely Significant Effect (LSE) of the project alone and in-combination with other projects, including the offshore scheme that will be the subject of a separate application. Can the applicant explain what the sources are of the distribution data (including dates it was collected)? For clarity, could the applicant update the figures in Appendix 5.4.12 to include the site boundary of the offshore scheme?*

Details of Flamborough Head and Filey Coast pSPA and Appendix 5.4.12 were incorporated into the revised NSER that was accepted by the ExA at the Preliminary Meeting. Given that this was submitted by the applicant after the close of the relevant representation period, do NE and any other interested parties have any comments to make on the information that has been provided by the applicant?

The information in Table 5.4 and Appendix 5.4.12 of the No Significant Effects Report refers to foraging activity of the interest features of the pSPA. However, potential impacts will also need to be considered on young guillemot and razorbill which are flightless and therefore sensitive to disturbance during the anticipated pipeline installation period in June / July. The source of the data presented in Table 1 and the figures in Appendix 5.4.12 should also be clarified.

Q3.28 *The silt management and spillage emergency response plans identified in Table 5.1 of the NSER are to be implemented across all construction areas and are stated to be included in the CoCP (Document 7.5). These two plans are not specifically listed in the CoCP although measures to address silt and spillage are considered. Does NE/EA consider the CoCP as drafted is sufficient in this respect or do the plans need to be identified separately in the CoCP?*

Natural England considers that sufficient measures have been identified in the Code of Construction Practice, and that these are secured by Requirement 14 of the draft DCO.

Q5.10 *Both NE and the EA are seeking (in their RR's) an additional requirement to protect flows in West Beck associated with dewatering activities at the River Hull / Driffield Canal crossing. Does the applicant accept this additional requirement and, if so, could a form of words be agreed with NE and the EA?*

Natural England recommended in its relevant representations that a requirement should be included in the DCO relating to the flow rate below which dewatering should not take place, as measured at the gauging station on West Beck. We have since received further correspondence from the applicant, and we note that Requirement 14 of the Draft Development Consent Order states that work must be carried out in accordance with the Code of Construction Practice (CoCP). We therefore consider that including the following measures in the CoCP will ensure that interest features of the SSSI can be adequately protected:

- Construction at the West Beck (River Hull) crossing will not take place during the period October to March, when the lowest flows occur.
- If the flow rate in West Beck drops below 0.368 cumecs, the Beck will be recharged using water from the water management scheme just upstream of the proposed pipeline crossing to ensure no further reduction in flow rate

Q7.11 Can the applicant explain that, given much of the Study Area is dominated by Grades 1, 2 and 3a of agricultural land which are considered to be BMV land, what will be the arrangements for monitoring its reinstatement? Do NE or Defra have comments on what monitoring is necessary? Do the applicant, NE and Defra have any views on how such monitoring can be secured in the DCO?

Natural England does not have any comments to make.

ANNEX D: Natural England's Letter of No Impediment with regard to the great crested newt licence application.

Please see separate attachment.