



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008 (as amended)**

**Yorkshire and Humber Carbon Capture and Storage (CCS)  
Pipeline**

**Examining Authority's Report of Findings and Conclusions**

**and**

**Recommendation to the  
Secretary of State for Energy and Climate Change**

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**Examining Authority**

**Andrew Mead**

**19 August 2015**

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**ERRATA SHEET – Yorkshire and Humber Cross Country CCS Pipeline – Ref. EN070001**

**Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 19 August 2015**

**Corrections agreed by the Examining Authority prior to a decision being made**

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
2	Heading	“..of Yorkshire and Humber Carbon Capture and Storage (CCS) Pipeline”	“..of the Yorkshire and Humber Carbon Capture and Storage (CCS) Cross Country Pipeline”
2	Narrative	“.. the construction of approximately a 75km onshore pipeline..”	““.. the construction of an approximately 75km onshore pipeline..”
5	1.0.1	“..Yorkshire and Humber Carbon Capture Transportation and Storage Cross Country Pipeline..”	“Yorkshire and Humber Carbon Capture and Storage Cross Country Pipeline”
5	1.0.1 (bullet 13)	“powers supplies”	“power supplies”
6	1.0.3	“The Yorkshire and Humber Carbon Capture Transportation and Storage Cross Country Pipeline..”	“The Yorkshire and Humber Carbon Capture and Storage Cross Country Pipeline ..”
6	1.0.3	“Development is required..”	“Development consent is required..”
9	2.0.2	“.. will comprise approximately 72km of onshore pipeline..”	“.. will comprise approximately 75km of onshore pipeline..”
9	2.0.2	“..via proposed multi-junction..”	“..via a proposed multi-junction..”
10	2.0.10	“..instillation..” (twice)	“..installation..” (twice)
10	2.0.10	“..aerial makers..”	“..aerial markers..”
11	2.1.2 (third bullet)	“An amendment to the format the coordinates for the Deemed Marine Licence (DML) are displayed.”	“An amendment to the format in which the coordinates for the Deemed Marine Licence (DML) are displayed.”
11	2.1.3	“..non-material changes to application..”	“..non-material changes to the application..”

13	3.1.1 (second bullet)	"..imposed on him under any enactment"	"..imposed under any enactment"
14	3.2.3	"..the purposes of s44 of the MCA.."	"..the purposes of s44 of the Maritime and Coastal Access Act 2009.."
24	4.2.6	"..included in the CoCP.."	"..included in the Code of Construction Practice.." (First time used)
25	4.2.11	"The Council also stated that properties close to.."	"The Council also stated that impacts on properties close to.."
26	4.3.1	"..Hudson`s Way LNR.."	"..Hudson`s Way Local Nature Reserve (LNR).. [First time used]"
26	4.3.5	"..and Hudson`s Way Local Nature Reserve (LNR).."	"..and Hudson`s Way LNR.." ("LNR" already used in 4.3.1)
32	4.3.35	"..principles in EN-4 EN-1.."	"..principles in EN-4 and EN-1.."
33	4.4.1	"Holderness Plan"	"Holderness Plain"
34	4.4.7	"EYRC" (twice)	"ERYC" (twice)
35	4.4.10	"..sought to offset and cumulative.."	"..sought to offset any cumulative.."
41	4.7.3	"..subsequent re-instatement to minimised.."	"..subsequent re-instatement to be minimised.."
45	4.8.1	"EYRC" (twice)	"ERYC" (twice)
48	4.10.1	"EYRC"	"ERYC"
49	4.10.6	"EYRC"	"ERYC"
51	4.11.6	"..complies with principles in EN-4 EN-1 and subject to.."	"..complies with principles in EN-4 and EN-1 and subject to.."
54	5.0.2	"..is not the competent authority this role is.."	"..is not the competent authority: this role is.."
58	5.5.5	"..the HRA requirements for the consented necessary to secure offshore elements.."	"..the HRA requirements for the consented project necessary to secure offshore elements.."
61	7.0.1	"..for the construction of the 68km long Yorkshire and Humber CCS Cross Country Pipeline."	"..for the construction of the 75km long Y & H CCS Pipeline."
76	7.4.38	"..National Gird plc.."	"..National Grid plc.."
76	7.4.38	"..was over £14 million with an operating profit of £3.7 million."	"..was over £14 billion with an operating profit of £3.7 billion."

80	7.4.55	“..the commercially viability of the farming the land..”	“..the commercial viability of the farming land..”
91	7.5.50	“..the protection of pant and apparatus.”	“..the protection of plant and apparatus.”
92	7.5.52	“The Canal and River Trust [.....] is the Navigation Authority for the River Ouse noted that the pipeline..”	“The Canal and River Trust [.....], the Navigation Authority for the River Ouse, noted that the pipeline..”
99	8.1.9	“EYRC”	“ERYC”

### List of Abbreviations

AONB	Area of <i>Outstanding</i> Natural Beauty
CO <sub>2</sub>	Carbon Dioxide
MCAA	Marine and Coastal Access Act 2009

## **File Ref EN070001**

### **Examining Authority's findings and conclusions and recommendation in respect of Yorkshire and Humber Carbon Capture and Storage (CCS) Pipeline**

The application, dated 18 June 2014 was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 18 June 2014.

The applicant is National Grid Carbon Limited.

The application was accepted for examination on 16 July 2014.

The examination of the application began on 19 November 2014 and was completed on 19 May 2015.

The development proposed comprises the construction of approximately a 75km onshore pipeline and associated infrastructure for the transportation of carbon dioxide. The pipeline will be routed from the proposed White Rose CCS Project (Drax, North Yorkshire) via proposed multi-junction at Camblesforth (North Yorkshire) to a land fall point near Barmston (East Riding of Yorkshire). The application will include associated infrastructure comprising pipeline internal gauge (PIG) traps, a multi-junction, three block valves, a pumping station and associated works.

### **Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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- APPENDIX B: EXAMINATION LIBRARY**
- APPENDIX C: EVENTS IN THE EXAMINATION**
- APPENDIX D: LIST OF ABBREVIATIONS**

# 1 INTRODUCTION

## 1.0 INTRODUCTION

1.0.1 The proposed development, the Yorkshire and Humber Carbon Capture Transportation and Storage Cross Country Pipeline (Y&H CCS Pipeline), comprises:

- the construction of a pipeline with an external diameter of up to 324mm and approximately 0.25km in length from the White Rose Power Project to a pipeline inspection facility (The 'Drax PIG Trap')
- Construction of the Drax PIG Trap on land adjacent to the White Rose Power Project (which itself is adjacent to the existing Drax Power Station)
- Construction of a pipeline of up to 324mm diameter and approximately 5.6km length from the Drax PIG Trap to the multi-junction facility at Camblesforth ("the Multi-junction")
- Construction of the Multi-junction
- Construction of a cross country pipeline with an external diameter of up to 610mm and approximately 67km length from the Multi-junction to an onshore pumping station at Barmston ("the Pumping Station")
- Construction of pipeline isolation facilities ("Block Valves") at Tollingham, Dalton and Skerne
- Construction of the Pumping Station
- Construction of a pipeline with an external diameter of up to 610mm of approximately 1km from the Pumping Station to mean lower water mark
- Construction of agricultural land field drainage
- Upgrade of temporary access road at Barmby on the Marsh
- Construction of cathodic protection facilities at the Drax PIG Trap, Multi-junction, Block valves and the Pumping Station including: kiosks; metering facilities; and cabling
- Construction of permanent access roads at the Multi-junction, Block Valves and Pumping Station
- Construction of two temporary pipeline store and office areas (at Tollingham and Driffield) including: office and welfare facilities; power supplies; enclosures; pipe, equipment and fittings storage; paint storage; fabrication areas; waste storage areas; spoil storage areas; internal haul roads; parking; and water management areas
- Construction of additional temporary construction areas at the Drax PIG Trap, the Multi-junction and the Pumping Station including: office and welfare facilities; power supplies; enclosures; pipe, equipment and fittings storage; paint storage; fabrication areas; waste storage areas; spoil storage areas; internal haul roads; parking and water management areas.

1.0.2 The Onshore scheme is the subject of this application for development consent, whereas the Offshore elements of the Scheme will be subject to a separate consenting regime under the Petroleum Act 1998 and

Energy Act 2008 and does not form part of this application for development consent. Throughout this report, reference in square brackets [] refer to the examination document listed in the examination library at Appendix B.

- 1.0.3 The Yorkshire and Humber Carbon Capture Transportation and Storage Cross Country Pipeline is a nationally significant infrastructure project (NSIP) as defined by s14(1)(g), s21(1) and s21(2)(a) of the Planning Act 2008 (PA2008). Development is required before the project can proceed. The project is an NSIP; under s14(1)(g) because it would comprise the construction of a pipeline other than by a gas transporter; under s21(1) as it is a cross-country pipeline whose length is intended to exceed 16.093 km and would require authorisation under s(1) of the Pipelines Act 1962; and under s21(2)(a) because both ends of it are in England.
- 1.0.4 An application for development consent was submitted on 18 June 2014 and accepted for examination on 16 July 2014. I was appointed on 26 September 2014 as Examining Authority (ExA) to examine and report on the application [PD-001].
- 1.0.5 The applicant gave notice under s56 of the PA2008 to the persons prescribed that the application had been accepted and gave them an opportunity to make relevant representations. It certified on 17 September 2014 that this had been carried out. 87 relevant representations were subsequently received [RR-001 to 087].
- 1.0.6 A letter was issued on 24 October 2014 [PD-001] under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), together with an initial assessment of principal issues. A preliminary meeting was held at Bishop Burton College, Bishop Burton, Beverley on 19 November 2014 at which the applicant and interested parties were able to make representations to me about how the application should be examined. The examination began on 20 November 2014.
- 1.0.7 Development consent under the PA2008 can only be granted by the Secretary of State (SoS) and this report provides the Secretary of State for Energy and Climate Change with my findings and conclusions on the application for development consent for the Y&H CCS Pipeline. This report also comprises my recommendation on whether to grant consent for the project and recommendations on the terms of the Development Consent Order (DCO) should the SoS agree with my recommendation.
- 1.0.8 The application is Environmental Impact Assessment development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (the EIA Regulations). It was accompanied by an Environmental Statement (ES) which, in my view, meets the definition given in Regulation 2(1) of these Regulations [APP-089 to 173]. In reaching my recommendation, the environmental information as defined in Regulation 2(1) (including the ES and all other information on the environmental effects of the

development) has been taken into consideration in accordance with Regulation 3(2) of these Regulations.

- 1.0.9 During the examination, I made a number of procedural decisions [PD-001 to 009]. These included decisions relating to the examination timetable, requests for Statements of Common Ground (SoCGs) and requests for further information which were issued by a letter, under Rule 8 of the EPR, dated 25 November 2015 [PD-003]. The main examination events are detailed in Appendix C.
- 1.0.10 During the examination, SoCGs were provided between the applicant and the following organisations:
- (i) East Riding of Yorkshire Council (ERYC)
  - (ii) North Yorkshire County Council (NYCC)
  - (iii) Selby District Council (SDC)
  - (iv) Beverley and North Holderness Internal Drainage Board
  - (v) Ouse and Humber Drainage Board
  - (vi) Selby Area Internal Drainage Board
  - (vii) Environment Agency (EA)
  - (viii) Marine Management Organisation (MMO)
  - (ix) Natural England (NE)
  - (x) English Heritage (EH)
  - (xi) Trinity House
- 1.0.11 As set out in the timetable for the examination [PD-005], the following hearings were held in Bishop Burton College, Bishop Burton, Beverley:
- (i) Open floor hearing on 28 January 2015
  - (ii) Issue-specific hearing on the draft DCO on 29 January 2015
  - (iii) Issue-specific hearing on Construction Operations (including water resources, drainage and reinstatement) on 3 February 2015
  - (iv) Issue-specific hearing on Minerals on 4 February 2015 (am)
  - (v) Issue-specific hearing on Biodiversity on 4 February 2015 (pm)
  - (vi) Compulsory Acquisition hearing on 5 February 2015.
- 1.0.12 The timetable for examination [PD-003] reserved time for a 'Residual Issues Hearing' on 6 February 2015 to discuss any residual issues from the previous hearings. I did not identify any issues requiring further examination after the course of the previous hearings and I therefore decided that this hearing was not required.
- 1.0.13 I undertook an accompanied site visit on 27 and 28 January 2015 [PD-005].
- 1.0.14 The notice, under s60(2) of the PA2008, inviting each local authority falling under s56A to submit local impact reports (LIRs) was given in the Rule 8 letter on 25 November 2014 [PD-003]. An LIR was received from East Riding of Yorkshire Council [REP1-102] and a joint LIR from North Yorkshire County Council and Selby District Council [REP1-101].

- 1.0.15 I issued one round of written questions on 25 November 2014 [PD-004]. Whilst a second round of questions was not issued, I made two requests for further information under Rule 17 of the EPR [PD-007, PD-008].
- 1.0.16 All documents, representations and submissions made, together with procedural letters, a note of the preliminary meeting and the itinerary for the accompanied site visit, are set out in Appendix B and are available on the project website. The examination was completed on 19 May 2015 [PD-009], and the dates of the main examination events are set out in Appendix C. A list of abbreviations used in this report is at Appendix D, The draft DCO, as recommended to be made by the SoS, is at Appendix A.
- 1.0.17 In addition to the consent required under the PA2008 (which is the subject of this report), the proposal would require consents from the EA under:
- (i) The Water Resources Act 1991 (s109) and the Yorkshire Land Drainage Byelaws 1980 in relation to flood defence
  - (ii) Water Act 2003 in relation to water abstraction
  - (iii) Environmental Permitting Regulations 2010 to acquire an environmental permit for discharge
  - (iv) Hazardous Waste Regulations
  - (v) Greenhouse Gas Emissions Trading Scheme Regulations 2012 in relation to greenhouse gas emissions permit for carbon dioxide venting. Internal Drainage Boards under: the Land Drainage Act 1991 (ss 23 & 66) in relation to flood defence consent and; the Land Drainage Byelaws in relation to land drainage consent
- Natural England (NE) under:
- (i) Conservation of Habitats and Species Regulations 2010 in relation to a licence for European Protected Species Mitigation
- 1.0.18 The report sections which follow set out respectively; the main features of the proposal and its site; the legal and policy context; my findings in relation to policy and factual issues; my overall conclusion on the case for development consent; compulsory acquisition; the draft DCO and finally my overall conclusion and recommendation.

## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **2.0 THE APPLICATION AS MADE**

- 2.0.1 The applicant, National Grid Carbon Limited, is a wholly owned subsidiary of National Grid. It undertakes Carbon Capture Storage related activities on behalf of National Grid.
- 2.0.2 The proposed development will comprise approximately 72km of onshore pipeline. The pipeline would be routed from the proposed White Rose CCS Project (Drax, North Yorkshire) via proposed multi-junction at Camblesforth (North Yorkshire) to a land fall point near Barmston (East Riding of Yorkshire).
- 2.0.3 The proposed development is split into various elements or Work No's in the draft DCO [REP8-018], and locations for these elements are shown on the works plans [AD-008 to 009; REP1-050 to 053 and REP8-011].
- 2.0.4 The principal development is mainly comprised of the pipeline and the above ground installations (AGIs). The carbon dioxide pipeline is described in detail in the Construction Report [AD-178] and split across the following Work No's of schedule 1 of the draft DCO [REP8-018] Work No's 1A, 1B, 2A, 3A, 3b, 3C, 3D, 3E, 3F, 3G, 4A, 4B, 4C, 4D, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 6A, 6B, 6C, 6D, 7, 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8I, 8J, 8K, 8L, 9A, 9B, 9C, 9D, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I, 10J, 10K, 11A, 11B, 11C, 11D, 12, 13A, 13B, 13C, 13D, 13E, 14A, 14B, 14C, 14D, 15A and 15B. The pipeline would have an external diameter of up to 610mm for the transportation of carbon dioxide in liquid form.
- 2.0.5 The Above Ground Installations (AGI's) consist of the following: the Drax Pipeline Internal Gauge (PIG) Trap on land adjacent to the White Rose Power Project (Work No. 1A); required to launch PIGs required as part of the planned pipeline inspection and maintenance programme.
- 2.0.6 The Camblesforth Multi-junction (Work No. 4A); which would facilitate the connection of multiple pipelines from other regional carbon dioxide emitters to the Onshore Scheme in the future.
- 2.0.7 Pipeline isolation facilities ("Block Valves") at Tollingham (Work No. 6A), Dalton (Work No. 9A) and Skerne (Work No. 11A). Block Valves are required at regular intervals along the length of the pipeline for maintenance and safety.
- 2.0.8 Barmston Pumping Station (Work No. 14A) which is required to re-pressure the carbon dioxide before it is transported offshore.
- 2.0.9 Examples of items of associated development in schedule 1 of the draft DCO include; access roads; temporary working areas; temporary pipeline stores and office, welfare and security facilities.

2.0.10 A list of further associated development is also provided in Schedule 1 of the draft DCO; these are associated with multiple Works Nos. and include: site preparation works and construction compounds for certain of the AGIs: for instillation of wires, cables, conductors, pipes and ducts; pipeline construction works; works to remove or alter the position of apparatus including mains, sewers drains and cables; locating aerial makers, cathodic protection test posts and field boundary markers; landscaping, ecological mitigation works and other works to mitigate any adverse effect of the construction, maintenance or operation of the authorised development; works for the benefit or protection of land affected by the authorised development; works required for the strengthening, improvement, maintenance or reconstruction of any streets; works to alter or remove road furniture; ramps, means of access, footpaths and bridleways; the carrying out of street works pursuant to article 10 (street works), works to alter the layout of streets pursuant to article 11 (power to alter layout, etc., of streets) and the alteration or removal of road furniture; works for the maintenance of the authorised development; works for the decommissioning, restoration and aftercare of the authorised development; instillation of drainage, drainage attenuation and land drainage including outfalls; and other works, including working sites, storage areas and works of demolition necessary for the construction or operation of the authorised development.

2.0.11 Ancillary matters include, for example, the maintenance and operation of the Onshore Scheme, the improvement, alteration and temporary stopping up of lengths of existing highways necessary for the Onshore Scheme, the creation of new private means of access, the interaction between leases of the Onshore Scheme and landlord and tenant law and provision for disputes and appeals under the Order.

## **2.1 THE APPLICATION AT THE CLOSE OF EXAMINATION**

2.1.1 The following application documents were updated during the examination.

- 2.1 Land Plans (sheet 17 of 25)
- 2.1 Land Plans (sheet 18 of 25)
- 2.1 Land Plans (sheet 24 of 25)
- 2.1 Land Plans (sheet 25 of 25)
- 2.3 Works Plans (sheet 17 of 25)
- 2.3 Works Plans (sheet 18 of 25)
- 2.3 Works Plans (sheet 24 of 25)
- 2.3 Works Plans (sheet 15 of 25)
- 2.4 Access Rights of Way and Stopping Up Plans (sheet 1 of 25)
- 2.4 Access Rights of Way and Stopping Up Plans (sheet 17 of 25)
- 2.4 Access Rights of Way and Stopping Up Plans (sheet 18 of 25)
- 2.4 Access Rights of Way and Stopping Up Plans (sheet 24 of 25)
- 2.4 Access Rights of Way and Stopping Up Plans (sheet 25 of 25)
- 2.5 Hedgerow Plans (sheet 17 of 25)
- 2.5 Hedgerow Plans (sheet 18 of 25)
- 2.5 Hedgerow Plans (sheet 24 of 25)

- 2.5 Hedgerow Plans (sheet 25 of 25)
- 2.7 Deemed Marine Licence Coordinates
- 2.8 Location Key Plan
- 2.9 Barmston Pumping Station Location Plan
- 2.18 Drax PIG Trap Planning Arrangement
- 2.19 Drax PIG Trap Elevations (N+E)
- 2.20 Drax PIG Trap Elevations (S+W)
- 2.22 Drax PIG Trap Elevations (Operational Site)
- 2.25 Camblesforth Multi-Junction Planning Arrangement
- 2.26 Camblesforth Multi-Junction Elevations (N+E)
- 2.27 Camblesforth Multi-Junction Elevations (S+W)
- 2.29 Camblesforth Multi-Junction Elevations (Operational Site)
- 2.32 Tollingham Block Valve Planning Arrangement
- 2.33 Tollingham Block Valve Elevations (N+E)
- 2.34 Tollingham Block Valve Elevations (S+W)
- 2.36 Tollingham Block Valve Elevations (Operational Site)
- 2.39 Dalton Block Valve Planning Arrangement
- 2.40 Dalton Block Valve Elevations (N+E)
- 2.41 Dalton Block Valve Elevations (S+W)
- 2.43 Dalton Block Valve Elevations (Operational Site)
- 2.46 Skerne Block Valve Planning Arrangement
- 2.47 Skerne Block Valve Elevations (N+E)
- 2.48 Skerne Block Valve Elevations (S+W)
- 2.50 Skerne Block Valve Elevations (Operational Site)
- 3.1 Development Consent Order
- 3.2 Explanatory Memorandum
- 4.3 Book of Reference
- 7.5 Code of Construction Practice
- 7.7.1 Drainage Design (sheet 17 of 25)
- 7.7.1 Drainage Design (sheet 18 of 25)
- 7.7.1 Drainage Design (sheet 24 of 25)
- 7.7.1 Drainage Design (sheet 25 of 25)
- 7.7.1 Drainage Design (sheet 0-16 & 19-23)
- 11.3 Offshore Scheme Technical Evidence Report

2.1.2 These plans were submitted to illustrate non-material changes to the application. In summary these amendments comprised:

- A reduction in the flexible drainage areas required and a reduction in the amount of land required for construction around the proposed Barmston pumping station resulting in a reduction in the application order limits.
- The removal of the wind turbines at each of the above ground installations (AGI's).
- An amendment to the format the coordinates for the Deemed Marine Licence (DML) are displayed.

2.1.3 I issued a procedural decision accepting these non-material changes to application on 26 January 2015 [RPD-006].

## **2.2 RELEVANT PLANNING HISTORY**

- 2.2.1 The White Rose CCS project, an NSIP which would be the source of the CO<sub>2</sub> to be transported along the pipeline, is currently under examination. The deadline for the close of this examination is 22 October 2015.
- 2.2.2 The applicant provided a document titled "Planning Applications within 500m of the Application Boundary (2009-2014)" [AD-119] for details of other development within 500m of the boundary.

### **3 LEGAL AND POLICY CONTEXT**

- 3.0.1 The proposed development comprises a Carbon Dioxide transportation and storage system to support the provision of Carbon Capture and Storage (CCS) technology which is a NSIP as defined by s14(1)(a) of PA 2008. The Secretary of State must therefore, under s104 of the PA 2008, have regard to 'any national policy statement which has effect in relation to development of the description to which the application relates' subject to certain exceptions.
- 3.0.2 Whilst other policies, including those contained in the development plans for the area, may constitute matters that the SoS may regard as important and relevant to the decision, the primacy of the National Policy Statements (NPSs) is clear (PA 2008 s104(3) and NPS EN-1, paragraph 1.1.1). In the event of a conflict between policies contained in any other documents (including development plan documents) and those contained in an NPS, those in the NPS prevail for the purposes of decision making on nationally significant infrastructure (NPS EN-1, paragraph 4.1.5).
- 3.0.3 The Planning Statement [AD-174] and the Environmental Statement [AD-089 to AD-173] which accompanies the application describe the main legal and policy context as understood by the applicant.

#### **3.1 PLANNING ACT 2008 (AS AMENDED)**

- 3.1.1 S104(3) of the Planning Act 2008 (PA2008) requires that the SoS must decide an application for development consent in accordance with any relevant National Policy Statement (NPS), except to the extent that the SoS is satisfied that, in summary:
- doing so would lead to the United Kingdom being in breach of its international obligations
  - doing so would lead to the SoS being in breach of any duty imposed on him under any enactment
  - doing so would be unlawful under any enactment
  - the adverse impact of the proposed development would outweigh its benefits; or
  - that any prescribed condition for deciding the application otherwise than in accordance with the NPS would be met.
- 3.1.2 S104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs, any local impact report (LIR); and any other matters the SoS thinks are both important and relevant to the decision.
- 3.1.3 This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 PA2008.

## **3.2 NATIONAL POLICY STATEMENT(S)**

3.2.1 I have had regard first and foremost to the requirements of the PA 2008, as amended. In relation to s.104 I have had regard to the matters in subsection (2). There are two relevant NPSs (s.104 (2) (a) of the PA 2008) for Energy in force:

- the Overarching National Policy Statement for Energy (EN-1)
- National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4).

3.2.2 EN-4 is relevant as the proposal is a cross-country pipeline over 16.093km long to transport natural gas which would otherwise require consent under s1 of the Pipelines Act 1962. These two NPSs formed the primary policy context for this examination. My views on their significance for this application are set out in Section 4. The NPS's also provide, in combination, the primary basis for decisions by the SoS.

### **UK Marine Policy Statement**

3.2.3 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of s44 of the MCA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.

3.2.4 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks.<sup>1</sup>

3.2.5 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.

3.2.6 The MPS has provided the overarching policy context for my consideration of the application offshore works and deemed Marine Licence (DML).

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<sup>1</sup> see Marine and Coastal Access Act 2009 s.42(3) and (4)

### **3.3 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS**

#### **Habitats Directive (Council Directive 92/43/EEC)**

#### **Birds Directive (Council Directive 2009/147/EC)The Convention on Wetlands of International Importance 1971 (Ramsar Convention)**

- 3.3.1 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites, including special areas of conservation (SAC) and the strict system of species protection.
- 3.3.2 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.3.3 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.
- 3.3.4 The UK is also bound by the terms of the Convention on Wetlands of International Importance 1971 (the Ramsar Convention), resulting in the designation of Ramsar sites in the UK, which are wetlands of international importance.

#### **Conservation of Habitats and Species Regulations 2010 (as amended)**

- 3.3.5 The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) update the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.3.6 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical

miles. It requires a competent authority before giving consent for a plan or project which 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 and projects) and is not directly connected with or necessary to the management of that site, to make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

- 3.3.7 The application of the Habitats Regulations is discussed in section 4 of this report.

### **Water Framework Directive**

- 3.3.8 On 23 October 2000, the "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" or, in short, the EU Water Framework Directive (the WFD) was adopted.
- 3.3.9 The Directive was published in the Official Journal (OJ L 327) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2000<sup>2</sup>.
- 3.3.10 NPS (EN-1) para. 5.15.6 states that the SoS: "should satisfy itself that a proposal has regard to the River Basin Management Plans and meets the requirements of the Water Framework Directive (including Article 4.7) and its daughter directives, including those on priority substances and groundwater".
- 3.3.11 The SoS should also consider whether appropriate requirements should be attached to any development consents or planning obligations in order to mitigate adverse effects on the water environment (NPS (EN-1) para. 5.15.7).
- 3.3.12 NPS (EN-1) requires the SoS to consider whether the mitigation measures put forward by the applicant for the construction and operation of the development are acceptable. It also recognises that the impact on local water resources can be minimised through effective planning and design (para. 5.15.8). If appropriate, the SoS should consider whether any Requirements should be attached to development consent and/or development consent obligations.

## **3.4 OTHER LEGAL AND POLICY PROVISIONS**

### **United Nations Environment Programme Convention on Biological Diversity 1992**

- 3.4.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this Convention in its consideration of the likely impacts of the proposed development and

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<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT>

appropriate objectives and mechanisms for mitigation and compensation. In particular the ExA finds that compliance with the UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfies, with regard to impacts on biodiversity, the requirements of Article 14. The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.

- 3.4.2 This is of relevance to environmental impact assessment and HRA matters as discussed in chapters 4 and 5.

### **THE WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)**

- 3.4.3 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England Natural England). The Act also contains measures for the protection and management of SSSIs.

- 3.4.4 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way (PRoW) and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species license will be required from Natural England.

- 3.4.5 This has relevance to consideration of impacts on SSSIs and on protected species and habitats.

### **NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006**

- 3.4.6 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

- 3.4.7 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development.

## **3.5 TRANSBOUNDARY EFFECTS**

- 3.5.1 Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations), the Secretary of State screened the proposed development for potential

transboundary effects on 23 September 2013 and 27 August 2014 and concluded that the proposed development is not likely to have a significant effect on the environment in another European Economic Area (EEA) State. In reaching this view the Secretary of State applied the precautionary approach. Transboundary issues consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary.

- 3.5.2 On this basis, I was of the view that the proposed development was not likely to have significant effects on the environment in another EEA State.

### **3.6 NATIONAL PLANNING POLICY FRAMEWORK**

- 3.6.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied.
- 3.6.2 The NPPF states in paragraph 3 that it: ...does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework). National policy statements form part of the overall framework of national planning policy, and are a material consideration in decisions on planning applications.
- 3.6.3 NPPF policies are not a material consideration under the PA 2008, but it is important and relevant to this application in certain parts. These are highlighted in Section 4 below.
- 3.6.4 On 6 March 2014 the previous planning guidance documents were replaced by the new Planning Practice Guidance (PPG). The Guidance supports the NPPF and is designed to provide useful clarity on the practical application of policy.

#### **THE DEVELOPMENT PLAN**

- 3.6.5 The application site is located within the boundaries of a number of county and district authorities. The proposed pipeline will begin at the Drax Power Station within Selby District (a district within NYCC), before heading east into East Riding of Yorkshire Council (ERYC), a Unitary authority. The majority of the Onshore Scheme falls within the boundary of ERYC.

#### **North Yorkshire County Council (NYCC)**

- 3.6.6 NYCC deals solely with planning matters relating to minerals, waste and highways. The Council has saved policies from the North Yorkshire Waste Local Plan (LP) (Adopted 2006) and the North Yorkshire Minerals Local Plan (Adopted December 1997). The North Yorkshire

Joint Minerals and Waste Plan are expected to be fully adopted by October 2015. A number of areas identified for future mineral extraction have been identified within the Order Limits.

### **Selby District Council (SDC)**

- 3.6.7 The Selby District Local Plan (SDLP) was adopted on 8th February 2005. Following this, the Selby District Core Strategy Local Plan was adopted in October 2013. The Core Strategy has replaced a number of SDLP policies, however many have been saved and should be read in conjunction with the Core Strategy to make up the Local Plan for the District.

### **East Riding of Yorkshire Council (ERYC)**

- 3.6.8 The Proposed Submission Strategy Document of the emerging East Riding Local Plan has been submitted to the Planning Inspectorate for the purposes of 'Examination in Public'. Until the East Riding Local Plan is adopted, four Local Plans continue to form the basis of the Development Plan in the East Riding area. These are:

- Beverley Borough Local Plan (adopted June 1996)
- Boothferry Borough Local Plan (adopted April 1999)
- East Yorkshire Borough Local Plan (adopted June 1997)
- Holderness District Wide Local Plan (adopted April 1999)

### **THE SECRETARY OF STATE'S POWERS TO MAKE A DCO**

- 3.6.9 The ExA was aware of the need to consider whether changes to the application meant that the application had altered to the point where it was a different application and whether the Secretary of State would have power therefore under s.114 of PA2008 to make a DCO having regard to the development consent applied for.
- 3.6.10 The Secretary of State will be aware of the letter dated 28 November 2011 from Bob Neill MP, then Parliamentary Under-Secretary of State for Planning (exam library or public ref). The view expressed by the Government during the passage of the Localism Act that s.114(1) places the responsibility for making a Development Consent Order on the decision-maker, and does not limit the terms in which it can be made.
- 3.6.11 In exercising this power the Secretary of State may wish to take into account the following views of the ExA identified in Chapter 8.

## **4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES**

### **4.0 MAIN ISSUES IN THE EXAMINATION**

4.0.1 Prior to the preliminary meeting, held on 19 November 2014, I made an initial assessment of principal issues (IAPI) for the examination as required under s88 of the PA 2008 and Rule 5 of EPR 2010. This IAPI had regard to the application documents, National Policy Statements for Energy (EN-1) and Gas and Oil Pipelines (EN-4) together with relevant representations submitted by interested parties [RR-001 - RR-087]. The IAPI was distributed to all interested parties as Annex C of the Rule 6 letter [PD-001] making clear that I would take into account all important and relevant matters.

4.0.2 Issues were identified under 13 headings:

- (i) air quality and emissions
- (ii) biodiversity, biological environment and ecology
- (iii) compulsory acquisition and related matters
- (iv) design, landscape and visual impact
- (v) flood risk and climate change
- (vi) historic environment
- (vii) land use and safety
- (viii) noise and vibration disturbance
- (ix) rationale for the selection of the route, worksites and pipe laying strategies
- (x) river change
- (xi) socio-economic effects
- (xii) traffic, travel and transportation
- (xiii) water quality and resources

4.0.3 Interested parties did not raise any points at the preliminary meeting relating to the IAPI and I saw no reason to change or add to these issues during the examination. This section of the report therefore sets out my findings and conclusions in respect of these issues, except compulsory acquisition and related matters, including financial viability which are contained in Section 6. All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out.

4.0.4 All the principal matters raised in the submitted local impact reports (LIRs) from (a) the East Riding of Yorkshire Council (ERYC) [REP1-102] and (b) Selby District Council and North Yorkshire County Council [REP1-101] are covered by my principal issues.

### **NEED**

4.0.5 Carbon Capture and Storage (CCS) offers a means to prevent large emissions to atmosphere of the greenhouse gas Carbon Dioxide from Coal and Gas fired power stations. The proposed Cross Country pipeline and associated infrastructure described in this application for

Development Consent is necessary to enable Carbon Dioxide to be transported from Drax (near Selby, North Yorkshire) and eventually other power stations (or other emitters of Carbon Dioxide) in the Yorkshire and Humber region. After transportation the Carbon Dioxide will be safely stored in porous rock formations beneath the North Sea [AD-176].

- 4.0.6 EN-1 states that *"The Government is leading the international efforts to develop CCS. This includes supporting the cost of four commercial scale demonstration projects at UK power stations. The intention is that each of the projects will demonstrate the full chain of CCS involving the capture, transportation and storage of carbon dioxide in the UK. These demonstration projects are therefore a priority for UK energy policy. The demonstration programme will also require the construction of essential infrastructure (such as pipelines and storage sites) that are sized and located both for the purpose of the demonstration programme and to take account of future demand beyond the demonstration phase. The (then) IPC should take account of the importance the Government places on demonstrating CCS, and the potential deployment of this technology beyond the demonstration stage, in considering applications for consent of CCS projects and associated infrastructure."*
- 4.0.7 The Yorkshire and Humber region provides an excellent opportunity for a demonstration project to form the basis for a regional network, capturing large volumes of carbon from a cluster of substantial emitters. There is a tradition of heavy industry in the area, which has led to the location of clusters of carbon dioxide emitters in the region.
- 4.0.8 The White Rose CCS Project, the proposed new power station at Drax, has been identified as the initial emitter for the purposes of the demonstration project. The proposed White Rose CCS Project, together with the Onshore Scheme (the current application), is a potential beneficiary of funding from DECC through its commercialisation competition. There are prospects of other emitters connecting in due course because the Onshore Scheme is located in the Yorkshire and Humber near to clusters of emitters; and specifically there are projects such as Don Valley Power Project and the North Killingholme power station project that are at various stages of project development.
- 4.0.9 The Onshore Scheme is sized to enable future connections, and incorporates a multi-junction that is designed to accommodate up to three additional emitters. The capacity of the pipeline is greater than the volume flows of carbon dioxide expected from the proposed White Rose CCS Project alone. The multi-junction is sited so that it may become a "hub" for future connections. [AD-176]

#### **4.1 ISSUES ARISING FROM WRITTEN SUBMISSIONS**

- 4.1.1 A number of issues were raised in written representations, nearly all of which fell within the categories of issues identified in my IAPI.

However, one area arising from written representations, but not specifically identified in the initial assessment, was that of environmental enhancements inside and outside the limits of the Order. This issue was raised by North Yorkshire County Council (NYCC) [REP1-101], the Environment Agency (EA) [REP1-012] and the Yorkshire Wildlife Trust (YWT) [REP1-019]. It was subsequently addressed in my written questions [PD-004] and issue specific hearing (ISH) [EV-004].

## **RATIONALE FOR THE SELECTION OF THE ROUTE, WORKSITES AND PIPELAYING STRATEGIES**

- 4.1.2 These matters are included in the ES [AD-090]. In broad terms, upon the award of an EC sourced grant in 2009, the applicant began to investigate a number of strategic options that could be considered as technically feasible to transport Carbon Dioxide from point source emitters in the Yorkshire and Humber region to a storage site identified in the southern North Sea [AD-090]. The onshore proposal has been developed so that multiple emitters can connect to the pipeline over time. This has been achieved through the inclusion of the Multi-Junction in the draft DCO and a pipeline that is sized to accommodate up to 17 million tonnes (Mt) of CO<sub>2</sub> per year. Including a means of access for future emitters and additional capacity in the pipeline will enable the Don Valley Power Project (DVPP) to connect to the scheme in the future.
- 4.1.3 A series of reports are listed in the ES which describe the options considered for the route corridor for the pipeline and the AGIs, including the pumping station [AD-090]. Three strategic route options were assessed, with the northern route being chosen over the southern option, south of the Humber, and a central route which involved crossing the Humber [AD-090]. These reports accord with EN-1 which states that applicants are obliged to include in their ES information about the main alternatives they have studied.
- 4.1.4 The northern route was considered to be preferable due to the lowest likelihood of significant effect on the environment; the lowest resource requirements during both construction and operation; the fewest potential effects on the agricultural resource; the least complex to construct and operate in health and safety terms; and the most likely to be delivered most quickly and at the lowest capital cost. The pipeline would be routed through countryside to avoid unacceptable impacts. I have no reason to challenge those conclusions and no representations were received which would cast doubt on them.
- 4.1.5 Route corridor studies were undertaken which included zones for the AGIs and potential areas for the landfall, taking into account both onshore and offshore considerations. In addition, six potential options were examined for the location of the pumping station. A further route corridor study was carried out to assess the connection of the White Rose Project at Drax with the pipeline together with a multi junction and PIG Trap site.

- 4.1.6 Following consultation feedback on the site of the pumping station, an alternative location was assessed in addition to a re-appraisal of sites previously identified and discarded. The further assessment and consultation resulted in the alternative location being selected for the proposal.
- 4.1.7 As a consequence of the above reports, I am satisfied that the detail of the route, the construction compounds, the location of the AGIs including the pumping station, the designs and layouts, the operational processes, including decommissioning, have been adequately addressed in the application.

## **4.2 AIR QUALITY AND EMISSIONS**

- 4.2.1 The ES [AD -158] concluded that potential effects on air quality would be predominantly associated with the generation and dispersal of dust and airborne particulate matter at the construction and decommissioning phases. The ES also stated that the predicted traffic flows during the construction phase would not exceed the EPUK<sup>3</sup> criteria for any construction routes and so no quantitative or qualitative assessment of effects from vehicle emissions was undertaken<sup>4</sup>. The effects associated with vehicle emissions were considered to be insignificant.
- 4.2.2 The risk of dust effects occurring at human receptor locations during earthworks were considered to be "medium" throughout the pipeline envelope. The exception to this was between the PIG Trap and Camblesforth Multi-junction Site, where the risk of effects occurring was considered to be "high". The risk of dust effects occurring at human receptors during the earthworks associated with the TCAs was considered to be "low" to "high", depending on the proximity of sensitive receptors. The risk of dust effects occurring at human receptors during the earthworks associated with the construction compounds was considered to be "low" to "high", depending on the proximity of sensitive receptors.
- 4.2.3 The risk of dust effects occurring at human receptor locations during earthworks and construction works associated with the AGIs was considered to be "low" or "negligible" at all human receptor locations. The exception to this was during the earthworks associated with the Camblesforth Multi-junction Site and Tollingham Block Valve Site, where the risk of dust effects occurring was considered to be "high".
- 4.2.4 The risk of dust effects occurring at human receptor locations during track out<sup>5</sup> was considered to be "medium".

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<sup>3</sup> Development Control: Planning for Air Quality. Environmental Protection (UK)

<sup>4</sup> Paragraph 1.1.5

<sup>5</sup> "track out": the transportation of dust and dirt from the construction site onto the public road network, where it may be deposited and then re-suspended by vehicles using the network.

- 4.2.5 Several ecological receptors were identified within 350m of the pipeline envelope and construction routes. The risk of dust effects occurring during the earthworks and track out were considered to be "medium" in the vicinity of the SSSIs.
- 4.2.6 With the mitigation measures included in the CoCP and secured in Requirement 14, the significance of the dust effects was considered to reduce to "neutral" at all human and ecological receptor locations during earthworks and construction works associated with the pipeline envelope, AGIs, TCA and construction compounds. The likely residual effects associated with track out would be reduced to "neutral" at all human and ecological receptor locations. During the decommissioning phase the risk of effects occurring was considered to be "neutral" at all AGIs.
- 4.2.7 As stated in EN-I para 4.10.3, the decision taker should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The assumption should be made that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them.
- 4.2.8 Public Health England (PHE) [RR-020] noted the conclusion that potential human health impacts due to historically contaminated land, construction related dust emissions, groundwater contamination and air pollution would have a negligible to minor public health significance if mitigations are implemented. Furthermore, on the basis of the submitted information, PHE is satisfied that the development's potential impacts on public health have been adequately addressed and, where necessary, suitable mitigation has been proposed. Moreover, PHE is content that the usual operational and regulatory controls managed by the relevant local authorities and the Environment Agency (EA) are satisfactory and should ensure that the impact of the development on public health would be minimised.
- 4.2.9 Nevertheless, as a result of the ERYC LIR, Requirement 17 was amended by the applicant to require submission to the relevant local planning authority of an investigation and risk assessment concerning any contamination arising from the works within 28 days of the contamination being reported to the planning authority and for the submission for approval of a scheme of remediation within 35 days.
- 4.2.10 In answer to my written questions [PD-004], the applicant [REP1-086] stated that the majority of measures seek to minimise dust generation occurring in the first place, but some are reactive remedial measures requiring the suppression of dust following its generation. Measures such as damping down materials with water and the use of mechanical road sweepers would be triggered by on-site observations by the Site

Environmental Manager and other employees as described in the Code of Construction Practice (CoCP).

- 4.2.11 Venting was not assessed for air quality purposes by the applicant in the ES. However, in the joint LIR [REP-101] with NYCC, Selby DC commented that the venting of CO<sub>2</sub> for maintenance purposes would not impact on air quality on a long term basis and is not covered by the Local Air Quality regime and objectives. The Council also stated that properties close to the TCAs or pipeline construction could be considered as potentially significant following EPUK guidance, specifically the construction access to TCA2, the multi-junction site and properties around Drax which are within 35m of the pipeline or TCA1.
- 4.2.12 Nevertheless, in their separate Statements of Common Ground (SoCG) [REP1-073], Selby DC [REP1-073] and the East Riding of Yorkshire Council (ERYC) [REP1-072] each agreed with the approach to air quality assessment in the ES and the appropriateness of the mitigation identified. The councils also agreed that the proposed mitigation would be adequately secured through the CoCP [REP6-007<sup>6</sup>] and Requirement 14 of the draft DCO<sup>7</sup>. Moreover ERYC stated in its LIR [REP1-102] that the requirement for the CoCP is acceptable and would contain adequate protection measures in respect of matters including dust.
- 4.2.13 Consequently, I do not consider that air quality mitigation measures are needed either for construction or operational emissions over and above those which already form part of the project application and are secured in the draft DCO.

### **4.3 BIODIVERSITY, BIOLOGICAL ENVIRONMENT AND ECOLOGY**

- 4.3.1 These matters are included in the ES in accordance with EN-4 [AD-120]. The ES [AD-120] concluded that there would be no significant residual effects on ecological receptors on the basis that:
- Potential effects on statutory designated sites River Hull Headwaters SSSI (which the project crosses at two locations and Hudson's Way LNR) would be mitigated through non-open cut crossings, standard pollution prevention procedures and measures to reduce the effect of temporary habitat loss and prompt re-instatement of habitats.
  - The areas of non-statutory sites located partially within the application boundary or adjacent to it would be minimal compared to the remainder of the site and therefore their integrity would not be affected.

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<sup>6</sup> Section 8

<sup>7</sup> Requirement 14 states "Construction work must be carried out in accordance with the Code of Construction Practice, unless otherwise approved by the relevant planning authority."

- Although areas of habitat would be temporarily lost to facilitate pipeline construction (including within temporary construction areas), they would be fully re-instated to their former habitats on completion of the works.
- Where the AGIs are located, arable land and small areas of other habitat (for example hedgerow) would be lost; however areas of new habitat would be created, including new sections of hedgerow, areas of scrub and tree planting.
- Effects on protected species would be mitigated through appropriate timing of works, prompt reinstatement, landscape planting and limited night working and appropriate lighting designs.

4.3.2 The applicant's assessment relied upon Requirement 8 'Scheme of ecological mitigation and reinstatement' of the draft DCO [REP8-018] which provides for a scheme of ecological mitigation and reinstatement to be submitted to and approved by the relevant planning authority or authorities. The CoCP, to be secured under Requirement 14, has also been relied upon and includes a comprehensive description of the mitigation and measures to control impacts on ecological receptors [REP6-007].

4.3.3 The initial advice from NE in their relevant representation [RR-057] was that in relation to nature conservation issues within its remit there was no fundamental reason or principle why the project should not be permitted, but that further information was required to ensure that unacceptable environmental impacts either would not occur or would be sufficiently mitigated. NE also raised some concerns over impacts on European sites, which are discussed separately in Chapter 5 of this recommendation report.

4.3.4 The principal ecological issues discussed during the examination and detailed below in this section of the report were in relation to impacts on designated sites and protected species and environmental enhancements.

### **Designated Sites**

4.3.5 The River Hull Headwaters SSSI and Hudson's Way Local Nature Reserve (LNR) are partially located within the application boundary. The SSSI is nationally important as the most northerly chalk stream in Britain. The site is designated for the following features: chalk streams with a variety of aquatic vegetation dependent upon flow rate; areas of species rich grassland and fen; wet woodland including extensive areas of alder and willow carr; invertebrate fauna typical of northern chalk streams; and a diverse breeding bird community in the river valley. Hudson's Way LNR comprises a section of an old railway line between Beverley and Market Weighton. Notable species within the LNR include orchids.

4.3.6 The pipeline would cross the River Hull Headwaters SSSI at two locations within the Skerne Block Valve to Barmston Pumping Station

section: south of Wansford, where it would cross the River Hull (or West Beck), and north west of Foston on the Wold, where it would cross Kelk Beck. The pipeline would cross both of these watercourses using non open-cut methods. The SSSI comprises only the water and the adjoining bank, therefore there would be no direct effect on either of the designated areas, other than where a temporary access bridge would be built for construction vehicles over the Kelk Beck and which would disturb the bank side habitat. In addition, there may be indirect effects due to disturbance of the faunal species associated with each SSSI and pollution of the watercourses. Where the pipeline crosses the Hudson's Way LNR there would be a temporary loss of grassland and scrub habitat and damage of retained young trees and scrub.

- 4.3.7 Mitigation measures at the River Hull Headwaters SSSI include pre-construction ecological surveys, a 2m buffer zone at the temporary bridge across the Kelk Beck to avoid direct effects on the bank side habitat and watercourse, fencing the working areas, the reinstatement of bank top habitats following construction, a buffer zone of 7m from the river bank at the non-open cut crossings at the River Hull/West Beck and Kelk Beck [AD-177]<sup>8</sup> [REP6-007]. These measures were incorporated into the CoCP [REP6-007]. The ES assessed impacts on the River Hull Headwaters SSSI as not significant [AD-120].
- 4.3.8 NE [RR-057] [REP1-026] confirmed that it was satisfied impacts on the interest features of the River Hull Headwaters SSSI could be avoided, subject to the inclusion of a requirement in the DCO to ensure that no dewatering takes place when flow rates as measured at the gauging station at Snakeholme, on the West Beck, are below 36.4 megalitres per day. This would protect habitats within the River Hull Headwaters SSSI which may be sensitive to dewatering. This was echoed by the EA [RR-031] [REP1-012]. The applicant agreed that in order to maintain water quantity and quality flowing in West Beck, should the flow drop below a threshold, the contractor would discharge water from the water management scheme for the pipeline crossing into the watercourse after it has passed through a series of settlement lagoons<sup>9</sup>. The CoCP was amended to include those measures<sup>10</sup>.
- 4.3.9 The ES [AD-120] also concluded that effects on Hudson's Way LNR would not be significant and that crossing measures to reduce the effect of temporary habitat loss would be incorporated as well as prompt re-instatement of habitats affected. No representations were made to dispute this.

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<sup>8</sup> CoCP paragraph 10.3.17

<sup>9</sup> Should flows in West Beck drop below the Q95 level of 0.368 cumecs measured at the EAs Snakeholme Lock gauging station. The discharge would be subject to the conditions of an Environmental Permit issued in advance by the EA.

<sup>10</sup> Paragraph 10.3.17

- 4.3.10 The ES lists 7 other SSSIs within 2km of the application boundary, of which the River Derwent SSSI, the Barnhill Meadows SSSI and South Cliffe Common SSSI are acknowledged by the applicant to have some form of hydrological linkage where effects on habitats are possible via changes in water quality and the hydrology of connecting watercourses. The mitigation which is proposed includes a Water Management Plan and a Pollution Prevention and Control Plan as described in the CoCP<sup>11</sup>. There have been no objections by interested persons to those measures or comments that the measures are considered inadequate. Indeed, in response to a written question, NE confirmed that it is satisfied that all mitigation measures outlined in the CoCP can be delivered and enforced [REP1-026 Annex A Q3.12].
- 4.3.11 There is no evidence to indicate that there would be any adverse effects caused by the proposal on these or other SSSIs either individually or in-combination with other projects. NE did not dispute that there would not be any adverse effects on notified features of the SSSIs listed above either falling partially within the application site or within 2km of it.
- 4.3.12 The SoCGs between parties including the local Councils, NE, EA and the applicant did not challenge the evidence which stated that, assuming agreed mitigation is implemented, the proposed development would not have a detrimental effect on other protected sites (e.g. Local Nature Reserves and County Wildlife Sites) or non-designated countryside.
- 4.3.13 The SoCG with NE [REP3-029] also agreed with the applicant's approach to securing SSSI Assent.

### **Protected Species**

#### **European Protected Species**

- 4.3.14 NE's relevant representation identified the following European protected species as being potentially affected by the project:
- Great crested newts
  - Bats
  - Otters
- 4.3.15 The ES [AD-120] stated that 14 of the 78 ponds assessed in the study area were found to have great crested newts present, or presumed to be present and identified the potential for loss of terrestrial habitat and a risk of mortality and injury. The ES proposed new great crested newt habitat and the exclusion of newts from the working area under a Natural England licence and assessed impacts as not significant. NE confirmed that it was satisfied in principle with mitigation proposals to

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<sup>11</sup> CoCP paras 9.2.6 et seq and 9.3.3 et seq

protect great crested newts and issued a "Letter of No Impediment" during the examination [REP1-026] [REP1-029] [REP3-029].

- 4.3.16 Although NE's relevant representation [RR-057] identified potential impacts on bats and otters, it also confirmed that it was satisfied with the mitigation measures set out in Section 8.2 of the ES and the proposed pre-construction surveys for bats. No further mention was made of otters by NE, however NYCC and Selby DC considered the mitigation for otters to be adequate [REP1-101].
- 4.3.17 The ES [AD-120] referred to wind turbines being located at all AGI sites except Barmston Pumping Station. They would each be a domestic scale turbine at a height of 6.5m attached to the instrument building. The ES confirmed that the risk of operational turbine collision risk for bats would be low; however I was concerned that insufficient evidence had been provided to justify a conclusion of no significant effects. As a result of my questioning, the applicant removed the wind turbines from the authorised development description at Deadline I.

### **Nationally Protected Species**

- 4.3.18 NE's relevant representation [RR-057] identified the following nationally protected species as being potentially affected by the project:
- Badger
  - Water vole
  - Reptiles
- 4.3.19 Nevertheless, the relevant representation further confirmed that it was satisfied with the mitigation measures set out in Section 8.2 of the ES and the proposed pre-construction surveys for these species.
- 4.3.20 Evidence of water vole presence or potential presence was found at nearly half of the 99 watercourses surveyed [AD-120]. With the implementation of mitigation measures, the ES assessed the potential for temporary disturbance, temporary severance of habitat, permanent loss of habitat and direct effects on the species as not significant. However, the EA [RR-031] raised concerns about the possible cumulative effects on water voles given the number of open cut crossings, each of which would reduce habitat suitability for a number of months. Concerns were also expressed by the YWT [RR-070] [REP1-019] regarding reinstatement of ditches and streams and water vole monitoring. The applicant provided further information on the amount of available suitable habitat for water vole compared with the amount of habitat temporarily lost at each type of crossing. The pipeline was considered in three zones which were split where there was a natural barrier to the interaction of local water vole populations. This confirmed that the amount of habitat temporarily lost to construction would be between 0.55% and 0.8% of the total habitat available in each zone [REP1-086]. The EA [REP1-012] [REP1-072] accepted that previously held concerns about the project's potential

cumulative impacts of multiple watercourse crossings on water vole populations had been addressed.

- 4.3.21 I queried the potential impact of operational noise on ecological receptors close to the pumping station given its rural nature and currently undeveloped status. However, NE confirmed at the biodiversity ISH [EV-004] that permanent noise from the Barmston Pumping station would not have a significant adverse effect on breeding, feeding or foraging birds from any protected sites or on any other sensitive ecological receptor [REP3-002<sup>12</sup>].
- 4.3.22 Given the reported presence of barn owls near the pipeline corridor, I also queried how the mitigation proposed in the ES would be secured and was informed that measures had been agreed between NE and the applicant and incorporated into the CoCP. The presence of barn owls along the corridor would be monitored, together with any barn owl nesting boxes within 50m of AGIs, including the Barmston Pumping Station. Existing barn owl boxes and trees with evidence of barn owl nesting or roosting would be avoided by the pipeline works wherever possible [CoCP<sup>13</sup>].

### **Environmental Enhancement**

- 4.3.23 The Planning Statement (PS) [AD-174] submitted with the application indicates enhancement measures which have been identified through the EIA process. These include improved structural diversity in the vegetation at AGIs and enhancement of wetland [AD-174<sup>14</sup>]. A full detailed list was given in answer to my written question 3.17 [REP1-086].
- 4.3.24 The PS also indicated other enhancements: landowners would be given the option to increase grassland species diversity along field margins and road verges; thin, gappy hedgerows would be planted up, subject to agreement with the landowner; reptile and amphibian refuges would be built; bat roosting habitats and boxes would be provided in appropriate locations; making available the clean pollution free water from hydrostatic testing for wetland habitat creation; and seeking enhancement opportunities at Snakeholme Pastures a 3.7ha Yorkshire Wildlife Trust (YWT) nature reserve between West Beck and Driffield Canal and also at Skerne Wetland near the Skerne AGI [AD-174<sup>15</sup>].
- 4.3.25 NE [RR-057] welcomed proposed improvement at Snakeholme Pastures however considered that such a large scale project would provide significant opportunities for biodiversity enhancements, in accordance with the NPPF<sup>16</sup>, EN1<sup>17</sup> and Section 40 of the Natural

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<sup>12</sup> Agenda item 10

<sup>13</sup> Paragraph 10.3.8

<sup>14</sup> Paragraphs 5.3.15 – 5.3.24

<sup>15</sup> Paragraphs 5.3.25 – 5.3.30

<sup>16</sup> Paragraph 118

Environment and Rural Communities Act 2006 and sought a more explicit description of the mechanism for securing these enhancements, such as appropriate legal agreements. The EA also believed that the proposals for enhancements were unclear and uncommitted and fell short of what a project of this scale should be capable of delivering [RR-031] and NYCC/Selby DC advised that further ecological enhancements should be delivered [REP1-101].

- 4.3.26 YWT [RR-070] [REP-019] [REP4-002] considered that, having regard to the 26 Slight Adverse impacts and 83 Negligible Adverse impacts of the scheme, as recorded in the ES, with only 7 Slight Beneficial impacts, the project should include enhancement rather than just mitigation consistent with NPPF<sup>18</sup>. The NPPF also highlights the importance of ecological networks and the need to create, protect, enhance and manage these important areas<sup>19</sup>.
- 4.3.27 YWT stated that enhancements should therefore be included within the application which link to wider habitat networks which could be achieved through an engagement project to encourage nearby landowners to carry out habitat enhancements on their land. Alternatively a community engagement project highlighting the importance of landscape scale conservation to the local community and working with schools/local community groups to improve habitats in the area could be used. YWT also suggested that enhancements could take place on their land [REP4-002].
- 4.3.28 The response of the applicant is that the purpose of the policy in EN-1 is to encourage applicants to take opportunities to enhance biodiversity, where such opportunities arise as part of the proposed development [RE1-094<sup>20</sup>]. The applicant concluded that the suggestion by EA, NE and the YWT that they should provide additional enhancement measures on the basis that doing so would be commensurate with the value of the project is not consistent with policy and nor is it robust.
- 4.3.29 As stated at the hearing on construction operations, the land at and around the AGIs would be retained by the applicant for landscaping purposes and so the land would be able to be managed for the benefit of diversity [REP3-012<sup>21</sup>]. A suitable mechanism to secure these measures titled "Protocol for Delivering Biodiversity Enhancement" was drafted and incorporated into the CoCP during the examination [REP3-016]. The Protocol also includes methods to deal with potential opportunities for enhancement on land outside the operational control of the applicant. The CoCP and hence the Protocol would be secured by Requirement 14 of the draft DCO.

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<sup>17</sup> Paragraph 5.3.4

<sup>18</sup> Paragraph 109

<sup>19</sup> Paragraphs 109 & 114

<sup>20</sup> Paragraph 4.1.1

<sup>21</sup> Agenda item 13

4.3.30 In the final versions of SoCGs, NE agreed that the enhancement details and principles included in the Planning Statement are proportionate and appropriate to satisfy the requirements of EN-1 [REP3-029]. The EA continued to disagree over the interpretation of EN-1 regarding the provision of biodiversity enhancements and consequently the enhancements proposed [REP3-030]. However, in my opinion, I consider requiring the enhancements would be unnecessary and unreasonable.

## **CONCLUSIONS**

4.3.31 I take note of the final version of the SoCG between the applicant and NE [REP3-029], which stated that there were no matters over which there is disagreement in respect of the Onshore Scheme. NE agreed the following: the range of surveys undertaken was appropriate to inform the baseline of the EIA; the baseline data was appropriate and proportionate; the method used for the ecological assessment was appropriate and the mitigation proposed would be appropriate and proportionate to minimise the effects identified.

4.3.32 I also note that East Riding of Yorkshire Council [REP1-038] [REP1-072], Selby District Council [REP1-022] [REP1-073] and North Yorkshire County Council [REP1-041] [REP1-071] [REP1-101] confirmed that they are satisfied with the assessment undertaken and the ecological mitigation measures proposed.

4.3.33 There were no outstanding concerns relating to impacts on designated sites and protected species by the close of examination.

4.3.34 In relation to enhancement, I agree with the applicant that the opportunities for enhancement fall into two categories. The first is on land which the applicant wishes to acquire at the AGIs, where control can be administered as the landowner. The second is where the rights over the land sought are only an easement for the purposes of construction, operation, maintenance and protection of the pipeline. In those circumstances, the land would revert to the landowner once reinstated, mostly for its former use as agriculture. Should there be opportunities for enhancement, this would have to be subject to agreement with the landowner and I accept that the Protocol would be a facilitating mechanism. Therefore, despite the very helpful and positive suggestions for enhancement measures by YWT [REP4-002] echoed by the EA [REP1-012], I agree with the applicant that to secure them in the DCO as a requirement would not meet the tests in EN-1 of being necessary and reasonable.

4.3.35 Accordingly, I consider that the proposal complies with principles in EN-4<sup>22</sup> EN-1<sup>23</sup> and subject to the inclusion of the mitigation discussed during the examination, including the scheme of ecological mitigation

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<sup>22</sup> Section 4.3

<sup>23</sup> Section 5.9 and paragraph 5.3.18

and reinstatement (Requirement 8) and the CoCP as revised and finally submitted [REP6-07], I see no reason why the DCO application should be refused on grounds of biodiversity, biological environment and ecology.

#### **4.4 DESIGN, LANDSCAPE AND VISUAL IMPACT**

- 4.4.1 The landscape and visual impact assessment by the applicant is included in section 6 of the ES [AD-156]. The majority of the land within the application site is in agricultural use and the landscape is primarily rural in character. The ES divides the topography of the linear site into three broad sections: (a) low lying, flat, open broad-floodplain influenced landscape of the Humberhead Levels and River Ouse; (b) rolling, deeply undulating, rounded chalk foothills and enclosed valleys of the Yorkshire Wolds landscape, including the distinctive wolds escarpment; and (c) the predominantly flat and gently undulating, open plateau of the Holderness Plan, including the more exposed coastal landscape.
- 4.4.2 Within the open and mostly rural landscape there are some urbanising features such as the Drax Power Station to the immediate south west of the application site, occasional wind turbines, overhead power lines and the associated pylons.
- 4.4.3 The applicant stated in the ES that the majority of landscape and visual disturbance associated with the pipeline envelope would be associated with the construction phase and potential effects would be likely to be limited in magnitude due to their temporary nature and short duration. The exception to this would be where the scheme has the potential for longer term residual effects on landscape character, which may be apparent during the operational phase, such as any loss of trees or other boundary features.
- 4.4.4 In the LIR [REP1-102<sup>24</sup>], ERYC commented that the pipeline itself would be below ground and the land would be reinstated to its current state following completion of the construction. The central section of the pipeline would extend through landscape which is defined as the Wolds Area of Landscape Protection (East Yorkshire Borough Wide LP, Area of High Landscape Value (Beverley Borough LP) and the Yorkshire Wolds Important Landscape Area (Submitted East Riding LP). However, due to the pipeline being buried, the Council accepts that there would not be conflict with policies EN3, E10 and ENV2 of the respective LPs.
- 4.4.5 The Council considers that the only permanent landscape and visual impacts would be from the AGIs. The Dalton Block Valve would be located within the Area of High Landscape Value and the Important Landscape Area. Although it would appear as an industrial installation, it would be relatively small scale and screened from the south by an

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<sup>24</sup> Paragraph 6.2.2

existing plantation. The landscaping proposed around the AGI would reduce any further impact and, on that basis, ERYC considered that there would not be any materially adverse effect on the landscape and so there would be no conflict with policies E10 of the Beverley Borough LP or ENV2 of the Submitted East Riding LP. I have no reason to come to a different conclusion.

- 4.4.6 The Tollingham Block Valve and the Skerne Block Valve would each be located in open countryside but outside any local landscape designation. They would be both partially screened by existing plantations with further proposed planting to reduce the potential impact. ERYC does not consider there would be any significant harm to the character of the open countryside caused by either Block Valve, and neither do I.
- 4.4.7 The Barmston Pumping Station would be located within the coastal zone identified in the East Yorkshire Borough Wide LP. Barmston & Fraisthorpe Parish Council (PC) were concerned about the impact of the pumping station and keen to ensure the adequacy of the landscaping [RR-016]. However, the design of the pumping station is aimed at being unobtrusive with the final details being approved by EYRC under Requirement 5. The low appearance of the groups of buildings and other structures would be seen from the north against a backdrop of the gently rising ground to the south. I consider that landscaping and re-grading the land around the pumping station would also mitigate the impact whilst being consistent with the characteristic undulations of the area. Although EYRC accepts that the buildings and associated infrastructure would be industrial in character and would inevitably affect the character of the landscape in the immediate vicinity of the sites of the AGIs, including the pumping station, no objections are raised by the Council and no conflict with development plan policies have been suggested. I have no reason to disagree with the Council's conclusions.
- 4.4.8 Mrs Webb-Ingall [RR-24] [REP1-007] commented that the access to the construction compound proposed on land opposite her house on the edge of Driffield would result in the loss of trees which act as a screen to the view of land beyond. The Kirkburn PC supported those comments and suggested alternative locations for the compound [R3-035]. The plans of the scheme show that four trees at the compound are at risk of felling or severe pruning in order to widen the access for construction traffic [REP8-016]. The applicant has stated that the removal of at least one tree and a degree of pruning to at least two others is anticipated. I consider that, whereas the loss of tree cover here would be unfortunate, the land would be reinstated following the completion of the construction operation. Therefore, given the short term nature of the adverse effect and the need for the compound, I do not accept that the DCO should be refused or varied to take into account the objections.
- 4.4.9 Only approximately 6km out of the 70km length of the pipeline would be in Selby DC/NYCC, the dividing boundary being the River Ouse. The

Councils, in their joint LIR, commented that the pipeline would cause temporary adverse impacts [REP1-101]. The Councils also commented that the majority of the route in NY would cross arable fields and where, following reinstatement, there should not be any significant visual impact or effect on openness. However, they further commented that construction of the AGIs in the Councils' area, Selby/NY Drax PIG Trap and the Camblesforth Multi-Junction, would have both temporary and permanent adverse visual impacts on the local community. The views from some viewpoints and public footpaths would be temporarily spoiled by construction activity and, although the AGIs are relatively small scale and would have screen planting, there would be long term urbanisation of the countryside.

- 4.4.10 Nevertheless, in the revised SoCG completed during the examination, NYCC agreed that the landscape proposals for the AGIs and the species mixes proposed for the Drax PIG Trap and the Camblesforth Multi-Junction would provide appropriate mitigation for the onshore scheme [REP3-027]. Furthermore, NYCC agreed that the effects of the development could not be further mitigated and that the enhancements sought to offset and cumulative or community impact can be delivered in an appropriately worded protocol submitted as part of the CoCP. As stated above, the Protocol has been provided and is secured in Requirement 14 of the draft DCO.
- 4.4.11 Requirement 19 of the draft DCO would be sufficient to ensure that all land used temporarily during construction would be reinstated to its former condition and use within 12 months of completion of the development, to reduce the wider impacts of the development. Requirement 22 would ensure a scheme of decommissioning of the development, taking into account future uses, demolition and restoration, would be agreed at least 6 months prior to the cessation of operations, which would also be sufficient to prevent any long term impacts should the development cease to operate.
- 4.4.12 Therefore, I am satisfied that the applicant has demonstrated good design, in particular where mitigating the impacts relevant to the infrastructure consistent with policies in EN-4<sup>25</sup> and EN-1<sup>26</sup>. In addition, I am satisfied that the development is sustainable and as attractive, durable and adaptable as it can be and that functionality and aesthetics have been taken into account.

## **4.5 FLOOD RISK, CLIMATE CHANGE AND RIVER CHANGE**

- 4.5.1 Water resources and flood risk are assessed in the ES [AD-105]. In addition, a flood risk assessment has been submitted [AD-187]<sup>27</sup>. The

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<sup>25</sup> Paragraphs 2.3.1 and 2.3.2

<sup>26</sup> Paragraphs 5.9.17, 5.9.18 and 5.9.22

<sup>27</sup> See EN-1 Section 4.8

assessment of risks associated with climate change is integrated within the two documents and therefore complies with EN-1<sup>28</sup>.

- 4.5.2 The SoCG between the applicant and the EA was revised during the examination [REP3-030]. In addition to agreeing that the baseline information gathered for ground conditions, water resources and ecology was sufficient for EIA purposes, the parties also agreed the assessment and the appropriateness of the mitigation identified for water resources and ecology.
- 4.5.3 The EA [REP1-012] were initially concerned about the impact the project might have on the rates of sedimentation in the water environment due to many open cut river crossings or through the creation of large areas of open bare ground which increases the risk of sediment run off into watercourses with consequent adverse effects on water quality and ecology. I consider that these concerns have been allayed by draft DCO Requirement 14 which secures the construction of the proposed development must be in accordance with the CoCP and the proposed working methods contained therein.
- 4.5.4 The EA do not dissent from that conclusion in the SoCG and agreed that water management and pollution control measures secured through draft DCO Requirement 14 and Requirement 9, including both a construction water management plan and a pollution prevention and control plan, would enable adequate mitigation for the scheme and that the CoCP would provide an appropriate mechanism for managing construction practices [REP3-030]. There was also agreement to the approach and conclusion of the Flood Risk Assessment, including the measures incorporated into the design.
- 4.5.5 In the LIR, ERYC commented that none of the AGIs in the council's area would be located in a flood risk zone [REP1-102]. Although each of the block valves would have a small hardstanding, most of each site would be surfaced in gravel and hence permeable [REP1-102]. The pumping station hard surfacing and drainage details would require prior approval by the local planning authority under draft DCO Requirement 5. Similar details of the other AGIs could be required under Requirement 11. Requirement 16 would also require the development to take place in accordance with the drainage strategy which would be a certified plan under Article 49. Accordingly, ERYC are content that the degree of control achieved by the DCO requirements would enable the council to ensure that the drainage would be managed satisfactorily [REP1-102<sup>29</sup>]. I agree with that view.
- 4.5.6 NYCC do not dissent from the assessment in the ES that the residual effects of pollution from the scheme, the effects on water resources and the risk of flooding during construction and operation would be

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<sup>28</sup> Paragraph 4.8.5

<sup>29</sup> Paragraph 6.7.3

insignificant [REP-101<sup>30</sup>]. The Selby Area IDB is satisfied with their role in the post-consenting authorisation of details of construction and control of land drainage and does not object in principle to the scheme [REP3-032].

- 4.5.7 Although the pipeline would pass through a number of high risk flood zones, it would be underground and so not affect surface water run-off. Any reduction in soak away capacity caused by the pipeline would be insignificant and interruptions in flow would be managed by the drainage strategy. It would also be fully enclosed and therefore not affected by flooding. I consider that despite parts of the project, including the AGIs in the southern area of the scheme, being located in Flood Risk Zone 3, the Exception test described in NPPF<sup>31</sup> can be met in that the wider sustainability benefits of this nationally significant infrastructure development outweigh the flood risk.
- 4.5.8 The pipeline would cross many watercourses, including the Rivers Ouse and Hull. However, all main rivers and Water Framework Directive (WFD) watercourses<sup>32</sup> would be crossed by non open cut methods and therefore would be unaffected. The crossing of the Bracken Beck would be the exception due to engineering issues and would be crossed by an open cut method, but mitigation by the reinstatement of the bed and the banks, should enable the works to be compliant with the objectives of the WFD. Objections by the landowner of Bracken Beck [RR-072] were responded to by the applicant [REP1-092 Nos. 72 & 73], including the statement that, should damage be caused, compensation would be paid. I consider that this would be provided under Article 28(5) of the draft DCO. The EA are satisfied that the draft DCO requirements would enable the Bracken Beck crossing to be built with no adverse impact [REP2-005<sup>33</sup>] and I have no reason to disagree with that conclusion.
- 4.5.9 Spaldington PC [RR-086] specifically requested non open cut crossings of two water courses in their parish. However, given the deep excavations, heavy plant and equipment, the number of plant movements and the additional time necessary for the non open cut work, I consider that the potential environmental impact would be far greater. In addition, mitigation is provided for in the CoCP<sup>34</sup> and secured in draft DCO by Requirement 14. Therefore, I do not accept that the need for non open cut crossings here is proven.
- 4.5.10 The Barmston pumping station would be at least 700m from the current coastline and so would not be within the draft Coastal Change Management Area identified by ERYC as provided for in the NPPF. Even though the pipeline would extend into the sea at a point where

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<sup>30</sup> Paragraph 8.1

<sup>31</sup> Paragraph 103

<sup>32</sup> As defined by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (as amended)

<sup>33</sup> Comment on Q5.2

<sup>34</sup> Paragraph 10.3.20

the coast is receding at about 1.64m per year, the pumping station would be safe from coastal change for over 400 years at the current rate of erosion [REP1-102<sup>35</sup>]. To that extent, consistent with EN-1<sup>36</sup>, I am satisfied that the proposed development would be resilient to coastal erosion during its operational life and decommissioning. The MMO raise no objection to the scheme and, given the lack of evidence to the contrary, I consider the intertidal works would not inhibit sediment flow or have an adverse impact on coastal processes at other locations. Under Schedule 10 (Deemed Marine Licence) of the draft DCO, restoration plans and pre and post construction monitoring plans have to be agreed with the MMO prior to commencement<sup>37</sup>.

## **WATER QUALITY AND RESOURCES**

- 4.5.11 Water quality and water resources would be safeguarded by draft DCO Requirement 9 and the CoCP [REP6-07]<sup>38</sup> which is secured by Requirement 14. Requirement 9 states that before commencing operations on a stage of the pipeline prior approval from the local planning authority, in consultation with the EA, must be obtained for a Water Management Plan (WMP) and a Pollution Prevention and Control Plan (PPCP).
- 4.5.12 The WMP would identify areas at risk of water pollution from surface water run-off, set out mitigation measures and treatment methodologies (silt management) and where they would be applied; establish the requirement for and position of water stops (to prevent the pipe trench becoming an adventitious path way for water and undermining of the pipeline); identify the requirement for de-watering, the location and design of any temporary water holding / settlement lagoons and the land take required; identify the location of off-easement pumping outfalls required in order to minimise risk of water pollution; and identify any land drains that may be disrupted during the construction phase and in the proximity of proposed settlement lagoons or off easement pumping outfalls. The WMP would also include mitigation measures for works within flood risk areas and requirements for hydrostatic test water abstraction and discharge.
- 4.5.13 The EA is satisfied that the risks associated with water quality have been adequately identified and that best practice mitigation measures to address these risks have been proposed within the CoCP, with further details to be included within the PPCP and the WMP, concerning controlling the potential for pollution from silt laden surface waters, both of which are secured through Requirement 9 [RR-31].
- 4.5.14 The PPCP would include matters such as how to manage fuel, oils and chemicals, the inspection of plant and equipment and the maintenance

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<sup>35</sup> Section 6.9 Coastal Erosion

<sup>36</sup> Paragraph 5.5.10

<sup>37</sup> EN-1 Paragraph 5.5.12

<sup>38</sup> Section 9.

of a buffer zone for certain activities close to a watercourse [REP6-07<sup>39</sup>]. Therefore, with the mitigation which is secured by the CoCP and Requirements 9 and 14, I consider that the impacts on water quality and resources would be acceptable in accordance with EN-1<sup>40</sup>.

## **4.6 HISTORIC ENVIRONMENT**

- 4.6.1 Issues presented by the historic environment are included in the ES [AD-130], which describes the significance, or value, of heritage assets affected by the proposal and the contribution of their setting to that significance in accordance with EN-1<sup>41</sup>. The data gathered for assessing the scheme covered the preferred route corridor and 500m either side of this. Evaluation and assessment criteria were developed from the NPPF and the Highways Agency Design Manual for Roads and Bridges (DMRB) guidance on Cultural Heritage. Archaeological fieldwork and desk-based research revealed 1,433 heritage assets in the study area dating from the prehistoric through to the modern periods.
- 4.6.2 Notwithstanding the consideration of alternative routes which, as one of its objectives, sought to minimise the disturbance to archaeological and cultural heritage assets, there would still be some effect on identified assets including on an Iron Age ladder settlement, two deserted/shrunken medieval villages, a Roman roadside settlement, a possible prehistoric settlement and two areas of possible Roman pottery production [AD-130<sup>42</sup>].
- 4.6.3 Although mitigation through the CoCP and Requirement 12 would reduce the significance of effect to minor adverse or less in most cases, there are 18 assets where the significance of effect would be moderate adverse<sup>43</sup>. These assets are located in small localised sections of the pipeline envelope, and in most areas the effects would be minimal or non-existent. However, the significance of the residual effect on these assets would remain moderate adverse and the overall significance of the scheme in terms of its effect on archaeological and cultural heritage is assessed by the applicant to be moderate adverse.
- 4.6.4 Nevertheless, under Requirement 12 of the draft DCO, no stage of the development, if authorised, would commence until a written scheme of archaeological investigation for that stage had been submitted to and approved by the local planning authority. The scheme would identify areas where a programme of archaeological investigation would be required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found. In the SoCG [REP3-028], ERYC and the Humber Archaeology Partnership (HAP) agreed that the assessment methodologies applied in the ES, the

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<sup>39</sup> Paragraph 9.3.5

<sup>40</sup> Section 5.15

<sup>41</sup> Paragraph 5.8.9

<sup>42</sup> Paragraph 14.1.1

<sup>43</sup> See Table 11 p 146 AD-130

appropriateness of surveys and the assessment of residual effects, provide a robust assessment. They further agreed with the approach to further work and mitigation as set out in the ES, secured through Requirement 12; and Section 11 of the CoCP, secured through Requirement 14.

- 4.6.5 NYCC had raised the issue of the proximity of the proposed Drax PIG Trap to the Drax Priory Scheduled Monument and the associated fishponds, the latter possibly containing well preserved remains [REP1-101]. The applicant commented that geophysical surveys had shown no indications of fishponds and they may well be located outside the pipeline envelope. In any event, should they be found during prior surveys or construction, appropriate excavation and recording would take place.
- 4.6.6 The boundary of the PIG Trap site would be about 150m from the monument and in the SoCG [REP1-074], English Heritage (EH) (now Historic England) agreed that there were no statutory designations affected by the scheme. All matters were agreed between the applicant and EH, and the latter did not object to the proposal. EH accepted that the ES presented an agreed baseline of information for the purpose of the ES, the assessment methodology in the ES was appropriate, the residual effects reported in the ES were an appropriate reflection of the likely effects of the project and the approach to intrusive archaeological works would be controlled through a requirement in the DCO. EH also confirmed that Requirement 12 as set out in the draft DCO would be appropriate [RR-013].
- 4.6.7 I also agree with the assessment by the applicant. The effect on the setting of the Drax Abbey Scheduled Monument and the fishponds would be negligible, especially in comparison with the presence of the existing Drax Power Station. The proposed planting around the PIG Trap would provide further mitigation as would, more generally, the environmental enhancements sought by the council and secured by the Protocol attached to the CoCP.
- 4.6.8 ERYC considered that the proposed AGIs would be generally detached from villages and their settings and so would not have any significant impacts on listed buildings or conservation areas within them. There are 2 listed buildings close to the temporary construction area (TCA) south of Wansford (Wansford Bridge and Snakeholme Lodge) but the works here would be temporary and no objection was raised by the Council. Policies EN20 of the East Yorkshire Borough Wide LP, E25 and E37 of the Beverley Borough LP and EN46A and EN51 of the Boothferry Borough LP seek to ensure that new development would

preserve the setting of listed buildings and conservation areas. The Council does not claim any conflict with those policies [REP1-102<sup>44</sup>].

- 4.6.9 In view of all of the above points, I am satisfied that there would be no loss of significance of designated heritage assets or adverse effect on their settings and that the loss of significance of other heritage assets identified in the ES is justified on the merits of the proposal. This conclusion takes into account the presumption in favour of conserving such assets where designated, as set out in EN-1<sup>45</sup>.

## **4.7 LAND USE AND SAFETY**

- 4.7.1 These matters were incorporated in the ES [AD-117 & 107]. The ES includes information on geology, soils, agriculture and the proximity of other development to the pipeline corridor. One of the two construction compounds proposed, at Driffield, has a proposed housing allocation in the East Riding Local Plan Proposed Submission Strategy Document. The other, Tollingham, is in agricultural use, as is most of the remainder of the pipeline corridor until the landfall at the beach near Barmston. The pipeline would pass close to two mineral operations, the Bracken Hill industrial chalk quarry and Park Farm sand and gravel quarry, as referred to below.

### **Agriculture**

- 4.7.2 The ES indicates that the land within the pipeline envelope is used mainly for arable crops and that its quality is higher than the national average for the presence of best and most versatile land ("BMV"), comprising about 10% Grade 1, 35% Grade 2 and 55% Grade 3 [AD-117]. The quality tends to be higher in the western sections of the pipeline. Taking into account the methodology in the selection of the pipeline route and the use of various criteria, including the aim to minimise the impact on the agricultural resource, I am satisfied that the use of "BMV" land is justified for the project<sup>46</sup>. In any event, about 450ha of the likely land take of around 472ha would be returned to agriculture upon completion of the pipeline, the balance being used for the AGIs, access roads and planting [AD-117<sup>47</sup>]. This is a small fraction of the agricultural land resource and BMV land in Yorkshire and Humber.
- 4.7.3 The measures for the care and handling of soil as described in the CoCP should enable adverse effects on soil quality due to disturbance and subsequent re-instatement to be minimised [REP6-007<sup>48</sup>]. In addition to the 472ha used, additional land would be severed from the main farmsteads which could be either too small or inconvenient to farm with modern machinery, as expressed by some objectors. In those

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<sup>44</sup> Paragraphs 6.10.1 – 6.10.3

<sup>45</sup> Paragraph 5.8.9

<sup>46</sup> EN-1 paragraph 5.10.15

<sup>47</sup> Paragraph 7.2.13

<sup>48</sup> Paragraph 14.3.1

circumstances, the applicant accepts that compensation would be paid in respect of severance or access difficulties.

- 4.7.4 The linear nature of the project means that there would be risks that plant and animal diseases could be spread between farm holdings and between individual fields. However, with the prior removal of livestock from the construction areas and, as stated in the CoCP, adherence to Defra guidance the risk should be minimised [REP6-007<sup>49</sup>]. Biosecurity arrangements would be discussed with landowners prior to entry<sup>50</sup>.
- 4.7.5 The NFU sought an after care period of 10 years but, in my opinion, there is no basis for period such as this to be formally introduced where it might be unnecessary [REP1-030]. The CoCP secured under draft DCO Requirement 14 would already ensure that the land is re-instated post construction with the applicant committed to compensate for demonstrable losses derived from the national agreement with the NFU and Country Land and Business Association [REP1-092<sup>51</sup>].

### **Land drainage**

- 4.7.6 The impact of the development on the existing drainage is described in the Drainage Report (Rev B) [REP5-010]. Given that most of the pipeline corridor is high grade agricultural land, the drainage of the affected fields during and after construction would be a key consideration in order to maintain its quality. Following the identification of the preferred scheme a land drainage survey was commissioned in order to understand the extent and working dynamics of the existing land drainage systems to design the drainage strategy<sup>52</sup> and reduce the extent of the DCO limits.
- 4.7.7 In response to the written question Q1.16, the applicant explained that the detailed plans of the drainage strategy are indicative only and do not form part of the final design which may vary according to the circumstances on the ground immediately prior to construction [REP1-086<sup>53</sup>]. This was confirmed at the ISH on construction operations [REP-3-012<sup>54</sup>]. The drainage strategy is secured in draft DCO Requirement 16<sup>55</sup> and agreed as appropriate for the management of land drainage by the EA in its SoCG.
- 4.7.8 If post construction defects are identified in the land drainage, the strategy states that applicant and landowner would agree a remedial plan or a compensation package. In addition, under Article 28 (4) of the draft DCO, the applicant must restore the land to the reasonable satisfaction of the landowner with the landowner being entitled to

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<sup>49</sup> Paragraph 14.2.5

<sup>50</sup> CoCP paragraph 14.2.5

<sup>51</sup> No.95

<sup>52</sup> REP5-010 Paragraphs 3.1.1- 3.1.5 and 3.2.1

<sup>53</sup> Q1.16

<sup>54</sup> Agenda item 3 question and response.

<sup>55</sup> Subject to the correction to the reference to drainage strategy being report 7.7 Rev B dated March 2015.

compensation for any loss or damage under Article 28(5). Accordingly, I consider that consent should not be withheld because of any concerns about the impact of field drainage on the quality of the agricultural land following construction of the pipeline or AGIs.

## **Minerals**

- 4.7.9 In response to my written question Q7.4, the applicant submitted a minerals report prior to the ISH on minerals [REP2-006] which describes the presence of minerals along or near the pipeline route. ERYC indicated in the LIR that, although the pipeline would pass through the (Mineral Safeguarding Area) MSA around the chalk works at the Bracken Hill industrial chalk quarry, the Council does not object to the route of the proposal in that area [REP1-102]. Representations were not received from the mineral operator. There are other similar incursions into areas where minerals are present, but to which the Council did not raise any strategic issues concerning resource sterilisation. I agree with the conclusions that there were no issues of sterilisation of minerals other than as discussed below.
- 4.7.10 However, the pipeline would cross land at Barf Hill Wood between Park Farm Quarry and Gransmoor Quarry, two active quarries from which sand and gravel is extracted [RR-021] [REP2-006]. A planning application to extract sand and gravel from beneath the pipeline route in this location was submitted by the mineral operator during the examination. It has been estimated by the applicant following questions raised at the minerals ISH that about 484,000 tonnes of sand and gravel could be sterilised by the pipeline, a quantity which could possibly be reduced by limited prior extraction [CR-020]. The mineral operator was party to the investigation and there has been no substantive evidence from the company to challenge it.
- 4.7.11 Representations from the Mineral Products Association (MPRA), the mineral operator (W Clifford Watts Ltd) and others sought to promote alternative routes for the pipeline, which would include re-routing through a worked out area of Park Farm Quarry [RR-021] [REP3-007, 008]. However, I am not persuaded that the alternative is preferable to the route for which the application was made for several reasons, not the least of which is that there is no continuous replacement corridor identified before and after the mineral working, it has not been subject to environmental assessment, the ERYC, as mineral planning authority, do not object to the sterilisation of the resource and there is no convincing evidence about the suitability of the route.
- 4.7.12 The land bank of sand and gravel in ERYC is estimated to be just over 7 years and the local aggregates assessment indicates that the ERYC area is a net exporter of sand and gravel. In any event, even if the mineral was relatively scarcer, I would consider the national need for the proposal would be greater than the local need for sand and gravel. Therefore, despite the possible loss of nearly half a million tonnes of sand and gravel caused by the pipeline traversing the mineral deposit and the possible hindrance to the long term development of the two

currently active quarries, I consider that the proposed route meets the requirements of EN-1 and would not conflict with development plan policies, either emerging or adopted, or the NPPF.

## **Safety**

- 4.7.13 Safety matters are described in the ES [AD-101]. The subjects covered include the likelihood of unplanned releases such as a leak or rupture of the pipeline or a leak at AGI. The impacts associated with an unplanned release are also assessed. The conclusions were that the likelihood of an unplanned release would be very low and, in any event, the effects on air quality and ground and surface water quality would be so low as to have no measurable impact. The impact on aquatic and terrestrial ecology would be negligible.
- 4.7.14 EN-4<sup>56</sup> states that the principal legislation governing safety of pipelines is the Pipelines Safety Regulations 1996 which require that pipelines are designed, constructed and operated so that the risks are as low as is reasonably practicable (ALARP). The regulations are enforced by the Health and Safety Executive (HSE). The HSE, having been consulted under s42 of the PA2008 in September 2013 by the applicant about the proposal had no adverse comment to make [AD-085]. The HSE made no representations into the examination of this proposal.
- 4.7.15 Public Health England (PHE) [RR-020] indicated it was aware that the applicant would be adopting a precautionary approach and had elected to design and operate the pipeline as if the CO<sub>2</sub> were classed as a "dangerous fluid" and classified as a Major Accident Hazard Pipeline (MAHP). PHE was satisfied with the approach taken in the preparing the ES and the conclusions which were drawn.
- 4.7.16 Representations were received from Mr Harper [RR-012] [REP1-008] about the proximity of the pipeline to a school and other occupied dwellings including a wish to see the pipeline rerouted. He also queried the degree of safety considered in designing and constructing the pipeline. The applicant commented that the pipeline had been designed in accordance with the current approved pipeline code and well within the accepted risk criteria applied by UK safety legislation. The applicant is of the view that the requirements of the Health and Safety at Work Act 1974 have been met and the risks are as low as reasonably practicable (ALARP) [REP1-092<sup>57</sup>].
- 4.7.17 The HSE would continue to be consulted by the applicant during the various stages in the lifecycle of the pipeline. In addition, Public Health England (PHE) has advised that it is satisfied with the approach taken in preparing the ES and the conclusions drawn [RR-020]. PHE is also satisfied that development's potential impacts on public health have been adequately addressed and, where necessary, suitable mitigation

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<sup>56</sup> Paragraph 2.19.4

<sup>57</sup> No.12

has been proposed. There is no substantive evidence to challenge those conclusions and, accordingly, I see no reason why consent should be withheld on the basis of the safety of the pipeline and associated AGIs.

## **4.8 NOISE AND VIBRATION DISTURBANCE**

- 4.8.1 This matter is included in the ES in accordance with EN-4<sup>58</sup> and EN-1<sup>59</sup> [AD-160]. The EYRC LIR [REP1-102] and revised SoCG [REP5-017] indicate that the proposed construction working hours and the noise levels which should not be exceeded are acceptable to the Council. The Council also agreed that the construction noise levels set by Requirement 15 of the draft DCO and the methodology for the noise report which must be submitted and approved before the start of the operation at the Barmston Pumping station were appropriate. Once construction has been completed, EYRC notes that the proposal should not have any residual noise or vibration impacts other than that caused by venting CO<sub>2</sub> at the AGIs which may take place twice a year as part of planned maintenance and which is dealt with in draft DCO Requirements 24 and 25.
- 4.8.2 Requirements 24 and 25 each state a noise level maximum for the nearest noise sensitive receptor (NSR), a duration limit of 1 hour and the hours between which venting could take place. The ERYC accepts that residential amenity would be protected from adverse noise impacts from the proposal both during construction and operations and I have no reason to disagree. Although the Council would have preferred the venting period to be set at 5 yearly intervals<sup>60</sup>, I accept the applicant's wish for a frequency of twice a year for AGI maintenance and an initial 5 years for internal pipeline inspection by PIGs, in order to maintain the safe operation of the scheme. Draft DCO Requirement 25 secures that advance notice of a venting incident of at least 24 hours shall be given to nearby residential and commercial properties and, where appropriate, at PRoWs. In the SoCG, ERYC agreed the noise limits referred to in draft DCO Requirements 24 and 25 [REP5-017]. The Council also agreed that the mitigation in the CoCP secured through Requirements 13, 14 and 15 would be appropriate for the management of noise emissions.
- 4.8.3 Selby DC has agreed that the construction noise levels set by Requirement 15 are appropriate for the scheme (with the exception of TCA2 discussed below). The Council also agrees that the CoCP is appropriate and that the requirement securing its implementation provides an appropriate mechanism for managing construction practices. Furthermore, the Council has agreed that the construction hours set by Requirement 13 and the exceptions are appropriate for a scheme of this nature.

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<sup>58</sup> Paragraph 2.20.2

<sup>59</sup> Paragraph 5.11.3

<sup>60</sup> REP1-102 Paragraph 6.6.4

- 4.8.4 The outstanding issue, is the request by Selby DC discussed at the hearing, for a pipe construction noise threshold of 55dB LAeqT on Sundays and Bank Holidays at noise sensitive receptors (NSRs) along Wade House Lane which leads to TCA2 compared to 65dB LAeqT on other days 07.00- 19.00<sup>61</sup> [REP4-036].
- 4.8.5 The applicant states that working on Sundays and Bank Holidays cannot be excluded, even though it would be unusual. Given the desirability of completing the pipeline construction works as soon as possible once they have commenced, and the need to accommodate unforeseen circumstances which could cause delays, I agree. The CoCP has been amended to state that for works adjacent to Wade House Lane south of the A645, topsoil storage bunds would be positioned within the working width between the pipeline trench and the residences which have been identified as NSRs and this would assist in noise attenuation. Therefore, I do not accept that the noise limits for this area should be as low as 55dB LAeqT and I consider that 65dB would be acceptable.
- 4.8.6 The submissions from the applicant indicate that the distance between the nearside of the Wade House Lane access and the five dwellings would be about 17.5m which, the evidence states, would be more than twice that at which complaints about vibration from construction traffic would be likely to arise. The CoCP states that the access road would be maintained without potholes or uneven surfaces which, together with the intended 10mph speed limit would, in my opinion, be sufficient mitigation for the temporary period during which the access would be in operation. Furthermore, in addition, the CoCP would provide for the investigation and remedy of any reasonable complaints from NSRs on Wade House Lane about vibration due to construction activities.
- 4.8.7 I am therefore satisfied that the proposal would avoid significant adverse impacts from noise and vibration on health and quality of life and minimise other such effects in accordance with EN-4<sup>62</sup> and EN-1<sup>63</sup>.

## **4.9 SOCIO-ECONOMIC EFFECTS**

- 4.9.1 The ES describes the socio-economic effects of the scheme [Doc 6.15, AD-165]. I consider that the overall scheme, including the offshore storage of the captured carbon, would be likely to have a very positive socio-economic effect in terms of its purpose and in the local economy through employment. But the direct effects of the pipeline would be mostly short term with benefits to local businesses and services during construction. Cumulatively, the proposal, when combined with the other elements of capturing the carbon from emitters and

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<sup>61</sup> See draft DCO Requirement 15 (1).

<sup>62</sup> Paragraph 2.20.6

<sup>63</sup> Section 5.11

subsequently storing it offshore, would have a positive effect as described in EN-4<sup>64</sup>.

- 4.9.2 It is estimated that, at the peak, about 1000 people would be employed in building the pipeline, with a consequent positive impact on expenditure within the local area. However, there would be disruption during that period due to construction traffic on local roads and interference with PRow along the pipeline route, including several long distance paths and cycle routes. Nevertheless, as agreed by ERYC and NYCC in their respective SoCG, no permanent closures or diversions of existing PRow would be required to accommodate the authorised development [REP1-072<sup>65</sup>] [REP1-071<sup>66</sup>].
- 4.9.3 When in use, the temporary construction areas and construction compounds would be likely to result in general disturbance through noise, dust and visual impact, despite mitigation provided for in the requirements of the draft DCO. Additionally, there would be interference with people who might wish to use a 200m section of beach at Barmston when the landfall was being built. However, these impacts would be temporary during the construction period and I do not accord them much weight.
- 4.9.4 Lissett and Ulrome PC expressed concern about the disturbance whilst the pipeline is being built due to dust and heavy lorry traffic. The area is dependent on tourism, and construction may cause businesses to fail [RR-020]. In addition, Burton Agnes PC were concerned about HGVs and other traffic using the single track road between Lissett, Gransmoor and Burton Agnes and the disruption to tourism with caravans already using the road [RR-023]. However, ERYC commented in the LIR that the proposal would not have any direct effect on any tourism or recreational facility, or the setting of them and considered that any temporary visual impacts experienced by traffic on the roads used by construction traffic would not be significant.
- 4.9.5 Concern was expressed by an interested party about the displacement and disruption of onshore and offshore intertidal commercial fish-netting activity conducted under licence by the EA for the capture of migratory salmon and sea trout [RR-010]. There are several licences issued by the EA for salmon and sea trout intertidal netting between Flamborough and Spurn Head and 5 licenses issued by the NE Inshore Fisheries Conservation Agency for primarily bass and dover sole netting between Flamborough and Withernsea [REP1-092<sup>67</sup>]. However, although disruption of fishing may well occur, given the temporary construction period, the small number of licences issued and the probable alternative fishing opportunities in the length of the coast in

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<sup>64</sup> Paragraph 1.7.2

<sup>65</sup> SoCG: Table 3

<sup>66</sup> SoCG: Table 3

<sup>67</sup> Response to representation 10

the licenced areas which is at least 46 miles, I consider the impact would be minimal.

- 4.9.6 Taking all of the above matters into account, including the mitigation secured by the requirements of the draft DCO and the CoCP, I am satisfied that the proposal overall would have a positive socio-economic impact and would therefore accord with EN-1<sup>68</sup>.

#### **4.10 TRAFFIC, TRAVEL AND TRANSPORTATION**

- 4.10.1 These matters are included in the ES [AD-162]. The application documents also included a transport assessment (TA) [AD-164], the approach to which is agreed with EYRC [REP5-017] and NYCC [REP3-027]. Many of the vehicular movements associated with the pipeline construction would take place within the 35m wide "working width" of the pipeline which would include a temporary "running track" alongside the trench. Deliveries from the public highway network would be made to a number of locations from where materials/vehicles and plant would be distributed along the temporary track to where they would be needed.
- 4.10.2 The proposed pipeline would be required to cross about 40 highways, including main roads such as the A63, A614, A1079 and A164, the majority of which would be by non open cut methods such as tunnelling. The only highways which would be crossed by open cut methods would be non-classified roads that carry little traffic. The Highways Agency has confirmed the scheme would not cross under the Strategic Road Network and issues of protective provisions do not arise [REP1-078].
- 4.10.3 Construction traffic on the public highway network would follow a specific Traffic Route Plan (TRP) which has been agreed with the relevant local highway authorities and which identifies the A614 as the main service road in ERYC and the A645 in NYCC. The TRP has been included in the CoCP and is therefore secured under draft DCO Requirement 14. The TRP would ensure that HGVs would only use appropriate roads and routes through small villages and other sensitive areas would be restricted to light goods vehicles necessary for the construction of the project, or would be avoided altogether. In the SoCG between the applicant and ERYC, and the applicant and NYCC, it was agreed that a Traffic Management Plan (TMP) secured in draft DCO Requirement 18 would be submitted to and approved by the local planning authority after consultation with the highway authority for each stage of the authorised development [REP5-017] [REP3-027].
- 4.10.4 Lissett and Ulrome PC [RR-20] and Burton Agnes PC [RR-023] expressed concern about heavy lorry traffic whilst the pipeline was being built and the use of single track roads. Similarly, G & HL Brownbridge [RR-087], although agreeing in principle to the

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<sup>68</sup> Paragraph 5.12.2

application, had concerns about excessive construction traffic using the A645/River Bridge. However, I am satisfied that with the mitigation possible in the CoCP and the need for prior approval of the TMP, the applicant and highway authorities have achieved the minimum disruption whilst having regard to the construction requirements of this nationally important project.

- 4.10.5 Permanent new accesses would be necessary at the Tollingham, Dalton and Skerne Block Valves and the Barmston Pumping Station. Temporary accesses would be needed to the construction compounds at Tollingham and Driffield. Permanent access to the Camblesforth Multi Junction from the A645 and Wade House Lane would be via a highways agreement and the access to the Drax PIG Trap would require temporary improvements. The details of the accesses and improvements would be subject to approval by the relevant authorities under the TMP for that stage. There is no evidence to suggest that such approvals would not be forthcoming nor relevant agreements reached under the Highways Act 1980.
- 4.10.6 EYRC proposed three alternatives to draft DCO Requirement 18 in the LIR [REP1-102]. The aim of the alternatives would be to secure wheel cleaning facilities, a programme and funding provision for improvements/repairs to be approved by the local planning authority and the provision of temporary parking loading, offloading and manoeuvring facilities. However, I agree with the response of the applicant that all these measures are already included within the CoCP which is secured under draft DCO Requirement 14 [REP2-005] [REP6-007<sup>69</sup>]. Therefore, the alternatives suggested by ERYC are unnecessary.
- 4.10.7 The proposed pipeline would cross the route of many PRoW<sup>70</sup>, including the major routes of the Hudson Way Rail Trail, a right of way which follows the dismantled railway line between Beverley and Market Weighton, and the Trans-Pennine Trail where it follows the River Ouse at Barmby on the Marsh. The majority of the rights of way would be crossed using open cut methods and would therefore require temporary closures. However, a small number of major routes including the Hudson Way and the Trans-Pennine Trail would be crossed using non-cut methods (trenchless such as boring, tunnelling or horizontal directional drilling) and would therefore be unaffected by the proposed works and not require closures.
- 4.10.8 The applicant would carry out condition surveys of all affected rights of ways prior to any works commencing, and reinstate all routes to their previous condition after works are complete under draft DCO Requirement 19. Temporary closures and diversions would be required where rights of way are to be crossed using open cut methods and

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<sup>69</sup> Paragraphs 6.3.1, 6.4.1 and 6.2.2

<sup>70</sup> 43 PRoW in ERYC; 7 affected in NYCC.

which would be undertaken consistent with the CoCP<sup>71</sup>. However, once complete, the rights of way network would be unaffected by the operation of the development.

- 4.10.9 The pipeline would cross Network Rail lines near Howden and Hutton Cranswick [RR-081]. These crossings would be undertaken by non open cut methods. The applicant and Network Rail submitted a Joint Statement [CR-019] shortly before the close of the Examination which explains why protective provisions for the draft DCO have not yet been agreed. I deal with this in Chapter 8 on the DCO.
- 4.10.10 Shortly before the close of the examination, ERYC indicated that its only outstanding matter related to the completion of an agreement with the applicant under Section 38 of the Highways Act 1980 where a final version had already been agreed [REP7-11].
- 4.10.11 Therefore, subject to the completion of the Section 38 Agreement between ERYC and the applicant, and the satisfactory resolution of the protective provisions and liability responsibility with Network Rail, I am satisfied that the proposal would not have an unacceptable adverse impact on existing transport networks, including traffic routing and management, highway and rail safety and physical impacts.

#### **4.11 CONCLUSIONS ON THE CASE FOR DEVELOPMENT**

- 4.11.1 I have set out in chapter 3 of the report, the relevant planning matters which the application is to be examined against. Having had regard to the application documents, the matters raised in LIRs, and representations, I have concluded that the project is in line with UK National Policy including EN-1 and EN-4 and the project would be consistent with Development Plan policies for the LPAs affected by it. I have also had regard to the LIRs submitted by the relevant local planning authorities.
- 4.11.2 I have put forward an HRA under the Habitats Regulations and I believe there would be no adverse effects on the integrity of any European sites. This is an important relevant matter for the SoS to consider and is addressed in Chapter 5.
- 4.11.3 In terms of the selection of the route and the assessment of alternatives, I am satisfied that the detail of the route, the construction compounds, the location of the AGIs including the pumping station, the designs and layouts, the operational processes, including decommissioning, have been adequately addressed in the application.
- 4.11.4 So far as air quality is concerned, with the mitigation measures included in the CoCP and secured in Requirement 14, the significance of the dust effects was considered to reduce to "neutral" at all human

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<sup>71</sup> CoCP Paragraph 6.5.1

and ecological receptor locations during earthworks and construction works associated with the pipeline envelope, AGIs, TCA and construction compounds. I agree with that view, and I do not consider that air quality mitigation measures are needed either for construction or operational emissions over and above those which already form part of the project application and are secured in the draft DCO.

- 4.11.5 The pipeline would cross the River Hull Headwaters SSSI in two locations and the Hudson's Way LNR. Mitigation measures incorporated into the CoCP and the draft DCO would avoid adverse impacts on the interest features of the River Hull Headwaters SSSI. The Hudson's Way LNR would suffer no significant permanent adverse impacts. Proposed pre-construction surveys and mitigation measures outlined in the ES and secured in the CoCP would avoid any significant adverse impacts on European and National Protected Species (Great Crested Newts, Bats, Otters; and Badger, Water Vole and Reptiles respectively).
- 4.11.6 There were no outstanding concerns relating to impacts on designated sites and protected species by the close of examination. The EA, YWT and Selby/NYCC considered that further environmental enhancements should be delivered. However, I agree with the applicant that to secure them in the DCO as a requirement would not meet the tests in EN-1 of being necessary and reasonable. I consider that the proposal complies with principles in EN-4 EN-1 and subject to the inclusion of the mitigation discussed during the examination, including the scheme of ecological mitigation and reinstatement (Requirement 8) and the CoCP as revised and finally submitted, I see no reason why the DCO application should be refused on grounds of biodiversity, biological environment and ecology.
- 4.11.7 I am satisfied that the applicant has demonstrated good design, in particular where mitigating the impacts relevant to the infrastructure consistent with policies in EN-4 and EN-1. Furthermore, Requirement 19 of the draft DCO would be sufficient to ensure that all land used temporarily during construction would be reinstated to its former condition and use within 12 months of completion of the development, to reduce the wider impacts of the development and Requirement 22 would ensure a scheme of decommissioning of the development would be agreed at least 6 months prior to the cessation of operations, which would also be sufficient to prevent any long term impacts should the development cease to operate. I am satisfied that any adverse landscape impact would only be temporary during construction and that, due to the siting and landscaping proposed, the impact of the AGIs would be minor or negligible.
- 4.11.8 I agree with the EA that with Requirements 9 and 14 of the draft DCO and the implementation of the construction water management plan and the pollution prevention and control plan, there would be no adverse effects from flood risk, climate change or river change. The proposed development would be resilient to coastal erosion during its operational life and decommissioning and the MMO raise no objection

to the scheme. I consider the intertidal works would not inhibit sediment flow or have an adverse impact on coastal processes at other locations.

- 4.11.9 Water quality and water resources would be safeguarded by draft DCO Requirement 9 and the CoCP which is secured by Requirement 14. Therefore, I consider that the impacts on water quality and resources would be acceptable in accordance with EN-1.
- 4.11.10 I am also satisfied that there would be no loss of significance of designated heritage assets or adverse effect on their settings and that the loss of significance of other heritage assets identified in the ES is justified on the merits of the proposal.
- 4.11.11 About 450ha of the likely land take of around 472ha would be returned to agriculture upon completion of the pipeline, the balance being used for the AGIs, access roads and planting. This is a small fraction of the agricultural land resource and BMV land in Yorkshire and Humber and I am satisfied that the use of BMV land is justified for the proposal. If post construction defects are identified in the land drainage, the drainage strategy states that applicant and landowner would agree a remedial plan or a compensation package. Additionally, under Article 28 (4) of the draft DCO, the applicant must restore the land to the reasonable satisfaction of the landowner with the landowner being entitled to compensation for any loss or damage under Article 28(5). Accordingly, I consider that consent should not be withheld because of any concerns about the impact of field drainage on the quality of the agricultural land following construction of the pipeline or AGIs.
- 4.11.12 Despite the possible loss of nearly half a million tonnes of sand and gravel caused by the pipeline traversing a mineral deposit and the possible hindrance to the long term development of the two currently active quarries, I consider that the proposed route meets the requirements of EN-1 and would not conflict with development plan policies, either emerging or adopted, or the NPPF.
- 4.11.13 So far as safety is concerned, the HSE would continue to be consulted by the applicant during the various stages in the lifecycle of the pipeline. In addition, Public Health England (PHE) has advised that it is satisfied with the approach taken in preparing the ES and the conclusions drawn [RR-020]. PHE is also satisfied that development's potential impacts on public health have been adequately addressed and, where necessary, suitable mitigation has been proposed. There is no substantive evidence to challenge those conclusions and, accordingly, I see no reason why consent should be withheld on the basis of the safety of the pipeline and associated AGIs.
- 4.11.14 I am satisfied that the proposal would avoid significant adverse impacts from noise and vibration on health and quality of life and minimise other such effects in accordance with EN-4 and EN-1. I am

also satisfied that the proposal overall would have a positive socio-economic impact and would therefore accord with EN-1.

- 4.11.15 Subject to the completion of the Agreement under Section 38 of the Highways Act 1980 between ERYC and the applicant, and the satisfactory resolution of the protective provisions and liability responsibility with Network Rail, I am satisfied that the proposal would not have an unacceptable adverse impact on existing transport networks, including traffic routeing and management, highway and rail safety and physical impacts.
- 4.11.16 Having regard to all of the matters referred to in in chapters 3 and 4, my conclusion is that, on balance, the matters weighing in favour of the development outweigh the matters weighing against. I therefore find that the case for development is made out and I recommend accordingly.

## **5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS**

- 5.0.1 The project engages the Habitats Directive, and the Habitats Regulations Assessment (HRA) process on the basis of its potential to adversely affect a number of European Sites and their features.
- 5.0.2 The Examining Authority is not the Competent Authority this role is reserved for the Secretary of State. As such I am not required to carry out an appropriate assessment or any subsequent stage of assessment or decision making under HRA. However, I do have a responsibility along with the applicant to ensure that sufficient information is available to inform an appropriate assessment should one be required. I have been mindful of this duty throughout the examination process.
- 5.0.3 In accordance with the advice provided by PINS Advice Note 10, I adopted a standardised Planning Inspectorate procedure of drawing together a Report on the Implications for European Sites (RIES) [OD-004]. The RIES compiles, documents and signposts relevant HRA information provided as part of the DCO application, and the information submitted throughout the examination by both the applicant and interested parties, up to its publication on the web site.
- 5.0.4 The RIES was published on 11 March 2015. In response, the applicant highlighted some matters for clarification [REP5-009] although did not disagree with the conclusions drawn. NE confirmed that they had no comments to make on the RIES [REP6-001].

### **5.1 PROJECT LOCATION IN RELATION TO EUROPEAN SITES**

- 5.1.1 The project is not connected with or necessary to the management for nature conservation of the European sites considered in the assessment.
- 5.1.2 There are no statutorily designated European sites within the Works or Order limits; therefore there would be no direct loss of any habitat within the boundary of any European site as a result of the proposal [PSC-014].
- 5.1.3 Within the application documents and subsequent assessments submitted during the examination, the applicant has assessed potential impacts to the following European sites located within 15km of the application site boundary:
- Humber Estuary Special Protection Area (SPA)
  - Humber Estuary Special Area of Conservation (SAC)
  - Humber Estuary Ramsar site
  - River Derwent SAC
  - Lower Derwent Valley SAC
  - Lower Derwent Valley SPA
  - Lower Derwent Valley Ramsar site

- Skipwith Common SAC
- Thorne and Hatfield Moors SPA
- Thorne Moor SAC
- Flamborough Head SAC
- Flamborough Head and Bempton Cliffs SPA
- Flamborough Head and Filey Coast potential SPA (pSPA)
- Hornsea Mere SPA
- Wash and North Norfolk Coast SAC.

5.1.4 The potential impact pathways on the above sites were considered to be:

- temporary disturbance to interest features
- temporary or permanent loss or fragmentation of supporting habitat

## **5.2 ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS RESULTING FROM THE PROJECT, ALONE AND IN COMBINATION**

5.2.1 The applicant considered the potential for temporary disturbance of interest features and temporary or permanent loss/fragmentation of supporting habitat on European sites in the NSER [PSC-014]. The applicant concluded that there would be no Likely Significant Effects (LSE) on any of the European sites considered. This conclusion was reached on the basis of the implementation of a number of built in mitigation measures. These measures, and an explanation of how they have been secured, are detailed paragraphs 3.6 and 3.7 of the RIES.

5.2.2 In response to my first written questions [PD-004, Q3.24], NE confirmed that they agreed with the content and conclusions of the screening matrices presented in respect of the onshore project [REP1-026] and confirmed in the SoCG and at the issue specific hearing on biodiversity that the onshore elements of the project would not result in a LSE as presented in the NSER [REP3-001] [EV-026].

5.2.3 NE stated in their written representation [REP1-026] that further information regarding the offshore project was required in order to demonstrate that there would be no adverse effects on the integrity of the following European sites:

- Humber Estuary SAC, SPA and Ramsar site
- The Wash and North Norfolk Coast SAC
- Flamborough Head SAC
- Flamborough Head and Bempton Cliffs SPA
- Flamborough and Filey Coast pSPA.

5.2.4 The applicant accepted that a LSE for the onshore project in combination with the offshore project could not be ruled out [REP2-019] and provided a Project Habitat Regulations Assessment Report [REP2-019] which considered the potential effects of the onshore and offshore projects as a whole and an Offshore Scheme Shadow Appropriate Assessment Report [REP2-020] on the European sites listed above. Further details can be found in the RIES [OD-004].

5.2.5 It was therefore widely acknowledged that the impacts likely to result in significant effects for European sites - and therefore necessary for consideration at appropriate assessment stage - are those associated with the offshore works of the project and not those within the works defined in the DCO.

### **5.3 CONSERVATION OBJECTIVES**

5.3.1 The conservation objectives for the European sites were provided in Appendix B of Natural England's relevant representation [REP1-028].

### **5.4 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES**

5.4.1 The Project Habitat Regulations Assessment Report [REP2-019] considered the potential adverse effects resulting from the project, and included consideration of potential in-combination effects with the offshore project, Dogger Bank Creyke Beck and Hornsea Round 3 developments.

5.4.2 The sources and mechanisms of effect from the offshore project were identified in Table 4.2 of the Project Habitat Regulations Assessment Report [REP2-019]; these reflected the concerns identified in representations from NE. They included:

- installation of the pipeline potentially resulting in an increase or decrease of the down drift sediment supply
- use of rock armouring potentially interfering with coastal process resulting in an increase or decrease of the down drift sediment supply
- disturbance from the physical presence of pipeline and normally unmanned installation (NUI) vessels
- disturbance from vessels and activities associated with the operation
- the effect of underwater noise on marine mammals.

5.4.3 The potential for adverse effects were summarised in Table 4.3 with reference to the Offshore Scheme Shadow Appropriate Assessment Report [REP2-020].

5.4.4 The Offshore Scheme Shadow Appropriate Assessment Report [REP2-020] provided a detailed description of the offshore project; a description of the baseline conditions for coastal processes, marine mammals and seabirds in the vicinity of the offshore project; and an assessment of effects of the offshore project.

5.4.5 The Project Habitat Regulations Assessment Report [REP2-019] concluded that "no adverse effects on the integrity of the Humber Estuary SAC (and associated effects on the Humber Estuary SPA & Ramsar), Flamborough Head SAC, Flamborough [sic] Head and Bempton Cliffs SPA, Flamborough Head and Filey Coast pSPA and the Wash and North Norfolk Coast SAC have been identified as a result of the Project or in-combination with other developments" [REP2-019].

5.4.6 At the issue specific hearing on biodiversity issues [EV-026], NE stated that, having reviewed the information, they were satisfied that there would be no adverse effect on site integrity for all sites for the onshore project, in-combination with the offshore project, because there is sufficient scope within the offshore project design to identify adequate mitigation measures in order to avoid an adverse effect. This is reflected in the SoCG [REP3-029] between the applicant and NE which confirmed that there were no matters over which there is no agreement in respect of the onshore project. In addition, NE agreed that there is also sufficient information in the HRA Report to enable the Secretary of State to undertake an appropriate assessment.

## **5.5 CONCLUSIONS**

- 5.5.1 I have had regard to the information provided by the Applicant and the advice provided by NE as the relevant statutory nature conservation body.
- 5.5.2 I acknowledge that the proposed development applicable to the DCO is one part of a wider carbon capture scheme which also includes a marine pipeline and offshore underground storage facility. The offshore elements of the wider scheme will be subject to separate consents under the Petroleum Act 1998 and the Energy Act 2008 (as amended) respectively.
- 5.5.3 At various points during the examination NE has expressed concern relating to the division of consents required to deliver the project in its entirety. In particular the concern relates to the need to assess the onshore and offshore elements of the project as a whole. The applicant has highlighted that for a variety of reasons the design of offshore elements of the wider scheme are necessarily lagging behind the onshore project. These concerns have been taken into account and the ExA has had regard to the points raised.
- 5.5.4 The applicant has made available information applicable to the offshore elements of the wider scheme and has provided an assessment of the likely effects. Following submission of The Offshore Scheme Shadow Appropriate Assessment Report [REP2-020] and The Project Habitat Regulations Assessment Report [REP2-019], NE has stated it is content that there is now sufficient scope within the current offshore project design in order to identify adequate mitigation measures applicable to those consents.
- 5.5.5 It is also an important consideration that the Competent Authority for both the onshore and offshore elements is the Secretary of State. In relation to this I have had regard to the statutory duties placed upon the Secretary of State under the relevant European and UK legislation<sup>72</sup>. I consider that at this time all reasonable effort has been

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<sup>72</sup> Council Directive 92/43/EEC (The Habitats Directive), The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitat Regulations), Council Directive 2009/147/EC (Birds

made in order to provide the necessary information to inform the assessment of in-combination effects of the onshore and offshore elements of the overall scheme. I am also content that at the appropriate time and with even more detail as to the offshore design the Secretary of State will be able to determine the HRA requirements for the consented necessary to secure offshore elements of the wider scheme.

- 5.5.6 Irrespective of the above, I am content that, subject to the securing of necessary mitigation detailed in the RIES, and secured by draft DCO Requirements 9, 11 and 14 it would be possible to conclude no adverse effect on the integrity of any European site, or on a site to which the same protection applies as a matter of policy, as a result of the project alone and in-combination with other plans or projects (including with the offshore project).
- 5.5.7 I also consider that sufficient information has been provided during the examination to enable the Competent Authority to undertake an appropriate assessment of the effects of the project on European sites.

## **6 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

- 6.0.1 In deciding the application in accordance with s104 of the Planning Act 2008, the Secretary of State (SoS) must have regard to any relevant National Policy Statement, local impact report, prescribed matter and other matters considered to be important and relevant to the decision. My overall conclusion on the case for development consent for this scheme is based on an assessment of these matters, including the strong levels of agreement between various bodies and the absence of significant levels of objection.
- 6.0.2 The need for the proposal is clearly set out in Government policy within National Policy Statements EN-1 and EN-4.
- 6.0.3 I have set out the reasons for my conclusions on each of the matters in Section 4. My conclusions on the main issues in summary are that I am satisfied that:
- (i) There is sufficient evidence to allow the SoS to conclude that significant effects can be excluded for all European sites or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects. Furthermore, such information has been provided, as is reasonably required, for the SoS to undertake an appropriate assessment if considered necessary. I am also satisfied that the proposal would not result in any unacceptable adverse impacts on wildlife sites and protected species generally.
  - (ii) There would be sufficient regulation of the construction process to avoid any increased flood risk and that the potential impacts of climate change have been fully considered. I am also satisfied that: the application is supported by an appropriate flood risk assessment; the proposal is in line with the relevant flood risk management strategy; and the proposal is appropriately flood resilient and resistant and any risk can be safely managed.
  - (iii) The proposal would avoid significant adverse noise, disturbance and vibration effects.
  - (iv) The proposal would incorporate adequate excavation and reinstatement measures and that the proposal would not have an unacceptable adverse impact on existing or future development. I am also satisfied that the proposal would have a satisfactory relationship with actual, planned and former mineral extraction areas.
  - (v) The proposal would not have an unacceptable adverse impact on existing transport networks, including traffic routing and management and highway and rail safety.
  - (vi) Any adverse impacts on the landscape caused by the pipeline would be temporary and reversible in a reasonable timescale and, in any event, would be insignificant. The impact of the AGIs on the landscape would be negligible or minor at worst.
  - (vii) The proposal would have a positive socio-economic effect.

- (viii) There would be no loss of significance of designated heritage assets and the loss of significance of other heritage assets is justified on the merits of the proposal.
- (ix) The detail of the route, construction sites, pipe laying strategies for different locations, designs, layouts, construction programmes and operational processes together with their selection have been adequately addressed in the application.
- (x) The proposal would not have any unacceptable effects in terms of air quality from construction and transportation.
- (xi) It is unlikely that the proposal would result in any unacceptable changes in watercourses to be crossed.
- (xii) There is nothing to suggest that the proposal would lead to any deterioration in water quality standards or any failure to meet river basin management plan objectives.

6.0.4 In conclusion therefore, I consider that the application accords with EN-1 and EN-4 and that there are no adverse impacts which would outweigh the need for the project to be delivered and the other benefits of the scheme. There is therefore a clear justification in favour of granting development consent for the Y&H CCS Pipeline scheme.

## **7 COMPULSORY ACQUISITION AND RELATED MATTERS**

### **7.0 THE REQUEST FOR COMPULSORY ACQUISITION POWERS**

- 7.0.1 The application for the DCO seeks compulsory acquisition powers for the acquisition of freehold land, permanent rights (such as rights of access) and temporary rights for the construction of the 68km long Yorkshire and Humber CCS Cross Country Pipeline. The pipeline would carry CO<sub>2</sub> in liquid form from a new power station near Drax to a pumping station at Barmston and then to a landfall point on the Holderness coast, from which it would be pumped 90km out to sea to a sub-surface storage site.
- 7.0.2 The application was accompanied by a Statement of Reasons (SoR) [AD-082], a Funding Statement [AD-083] and a Book of Reference (BoR) in five parts [AD-084] and Land Plans Sheets 0-26 [AD-006] showing the land referred to in the Book of Reference.

### **7.1 THE REQUIREMENTS OF THE PLANNING ACT 2008 (AS AMENDED)**

- 7.1.1 Compulsory acquisition powers can only be granted if the conditions set out in s122 and 123 of the PA2008 are met.
- 7.1.2 Section 122 (2) states that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development, or is replacement land. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.<sup>73</sup>
- 7.1.3 Section 122(3) states that there must be a compelling case in the public interest, which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not mean that the compulsory acquisition proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 7.1.4 Section 123 requires that one of three conditions is met by the proposal<sup>74</sup>, one of which is that the application for the DCO includes a

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<sup>73</sup> Guidance related to procedures for compulsory acquisition DCLG February 2010

<sup>74</sup> (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.

(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.

(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.

(4) The condition is that the prescribed procedure has been followed in relation to the land.

request for compulsory acquisition of the land to be authorised. I am satisfied that the condition in s123(2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.

7.1.5 Section 138 requires that the extinguishment of a statutory undertaker's right or the removal of its apparatus under an Order must be necessary for the purpose of carrying out the development to which the Order relates.

7.1.6 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers. These are:

- all reasonable alternatives to compulsory acquisition must be explored
- the applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the interference with the human rights of those affected.

## **7.2 THE EXTENT OF THE COMPULSORY POWERS SOUGHT**

7.2.1 The nature of the Onshore Scheme is such that it is necessary to acquire land and rights in land permanently, to acquire and exercise rights temporarily, and to seek other powers under the DCO that may interfere with property rights and private interests. National Grid would require the compulsory rights to be exercisable for eight years should the Order be made.

7.2.2 It is expected that the proposed White Rose CCS Project will make its Final Investment Decisions (FID) in middle of 2016 following confirmation from the UK Government that the necessary funding is to come from the UK CCS Commercialisation Programme. Capture Power Limited (CPL) expect to take around five years to construct the proposed White Rose carbon capture plant, and expect to have an operational pipeline ready and connected in the middle of 2021. National Grid's DCO will enable construction to commence by 2020, in anticipation of a DCO for the pipeline being made in 2015. This timescale would also allow National Grid to construct earlier should CPL be in a position to progress more rapidly.

7.2.3 Further to the above paragraph, and in anticipation of a two year construction programme, National Grid would need to expect to exercise the DCO's powers of compulsory acquisition up to the period 2022-23. These powers would be exercised on completion of construction of the Onshore Scheme, i.e., when the precise pipeline alignment and the strip over which rights will be required are known. This does not, of course, preclude the exercise of the compulsory acquisition powers in advance of, or during construction should the circumstances require it.

- 7.2.4 A further three years to exercise compulsory acquisition powers beyond the initial five years would provide even longer for landowners to enter into voluntary agreements, but yet sufficient time to exercise those compulsory acquisition rights, as well as provide sufficient programme flexibility should there be any programming delays around the anticipated time of construction.
- 7.2.5 It is the intention of the applicant to construct the authorised development using powers to enter and use land temporarily for the purposes of construction. This would provide National Grid with the assurance that it has fixed the pipeline alignment within the limits of deviation and so can take precisely the land it requires for the rights strip and no more.
- 7.2.6 This means that the two year construction period would need to be built into the programmed eight year period, together with a period for the procedural requirements associated with executing the general vesting declarations. It should also be noted that National Grid cannot preclude exercising the powers of compulsory acquisition in advance of construction should the circumstances require it.
- 7.2.7 The draft DCO includes the following compulsory acquisition provisions:
- Article 23 – Compulsory acquisition of land. National Grid will have the power to acquire compulsorily the Order land as shown on the land plan and described in the Book of Reference, so far as it is required to construct, operate and maintain the authorised development or to facilitate, or are incidental to it. The article provides for the discharge or suspension of rights, trusts and incidents to which the land was previously subject so far as their continuance would be inconsistent with the exercise of the powers under the Order. This power is subject to Article 28 which prevents the compulsory acquisition of land within Schedule 9.
  - Article 24 – Compulsory acquisition of rights. This Article allows National Grid to compulsorily acquire rights (e.g. to create new rights over the order land or impose restrictive covenants) over the Order land as described in the Book of Reference, insofar as they are necessary to construct, operate and maintain the authorised development or to facilitate, or are incidental to it. This power is subject to article 28 which prevents the compulsory acquisition of land within schedule 9.
  - Article 25 – Acquisition of subsoil only. National Grid would have the power to acquire subsoil so much of, or such rights in, the subsoil of the land subject to the Order without acquiring the whole. This enables National Grid to acquire subsoil below a stated depth rather than take all interests at all depths.

- Article 26 – Power to override easements and other rights. This Article allows for the extinguishment of private rights over land, such as easements, liberties, privileges, rights or advantages annexed to land and adversely affecting any other land, including any natural right to support or restrictions as to the user of land resulting from a contract. This prevents third parties from impeding the delivery of the Onshore Scheme through enforcement of their own private interests.
- Article 27 - Application of the Compulsory Purchase (Vesting Declarations) Act 1981. This Article incorporates the general law in relation to the ability to execute powers of compulsory purchase using a general vesting declaration, rather than just the notice to treat/notice of entry method.

7.2.8 The Onshore Scheme requires the following temporary powers under Article 28 of the draft DCO:

- Temporary possession to construct and carry out the authorised development across the areas show shaded dark grey and light grey on the land plans
- Temporary possession for the carrying out of drainage works only across the Order lands
- Temporary possession of land at Drax for the construction and carrying out of the authorised development at the Drax PIG Trap site
- Temporary possession of land at Camblesforth for the construction and carrying out of the authorised development at the Camblesforth Multi-junction site
- Temporary possession of land at Tollingham, near South Dalton and near Skerne for the construction and carrying out of the authorised development at the Tollingham, South Dalton and Skerne Block Valve sites
- Temporary possession of land at Tollingham and Driffield for pipeline stores and office areas for the construction and carrying out of the authorised development
- Temporary possession of land at Barmston for the construction and carrying out of the authorised development at the Barmston Pumping Station site
- Temporary possession of land on the Barmston foreshore for the construction and carrying out of the authorised pipeline development through the intertidal zone.

- 7.2.9 The Onshore Scheme also requires temporary possession powers to maintain the authorised development under Article 29 of the draft DCO.
- 7.2.10 The DCO contains additional powers related to the construction and carrying out of the authorised development, which may interfere directly or indirectly with private rights and interests, including:
- Article 10 – the power to carry out street works
  - Article 11 – the power to alter layout, etc., of streets
  - Article 12 – the power to construct and maintain new, altered or diverted streets
  - Article 14 – the power to temporarily stop up streets
  - Article 16 – the power to access to works
  - Article 19 – the power to discharge water into watercourses
  - Article 20 – the power to carry out protective works to buildings
  - Article 21 – the power to survey and investigate the land
  - Article 37 – the power to permanently and/or temporarily stop-up and divert private rights of way
  - Article 39 – the incorporation of the mineral code
  - Article 41 - Application of landlord and tenant law.

### **7.3 THE PURPOSES FOR WHICH THE LAND IS REQUIRED**

- 7.3.1 The scheme requires compulsory acquisition rights for the purposes of constructing the works, for carrying out the construction and maintenance, operation, protection and decommissioning of the scheme. They are also required to allow restoration and remediation of the land after construction, including field drainage.

#### **PERMANENT ACQUISITION OF LAND**

- 7.3.2 Land which is to be acquired permanently (i.e., all interests and rights) is shown within the Order Limits on the Land Plans in dark grey [AD-006] and referred to as Permanent Type 1 in the BoR [REP8-023]. The purpose of acquiring this land, which amounts to 10 plots<sup>75</sup>, is to

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75 Plot 1265 is referred to in the SoR as both Permanent Type 1 (Table 1) and Permanent Type 2 (Table 2). However, the BoR shows the plot as Permanent Type 2. Therefore the application is for permanent acquisition of rights (Type 2) not land (Type 1). There is no objection relating to this plot.

enable the applicant to construct, operate and maintain the AGIs (the Drax PIG Trap, the Camblesforth Multi Junction, the Tollingham, Dalton and Skerne Block Valves and the Barmston pumping station) [AD-082<sup>76</sup>].

### **Drax PIG Trap**

- 7.3.3 The Drax PIG Trap is needed to facilitate the launch of a Pipeline Inspection/Internal Gauge (PIG). The PIG can either be used to clean, inspect or gauge the pipeline interior. In this way the PIG and the trap are essential components necessary for the safe and efficient operation of the pipeline, as used throughout the pipeline industry.
- 7.3.4 The Drax PIG Trap needs to be located as close as possible to the White Rose site, that is, at the start of the pipeline where it can travel towards the multi-junction with the flow of the CO<sub>2</sub>. Fully comprehensive pipeline maintenance or data collection can only be performed if the PIG can travel the entire length of the pipeline.
- 7.3.5 The Drax PIG trap requires 0.59ha of land. This includes 0.19ha of operational land for the installation, with an additional 0.4ha for security and landscaping. The operational area includes space to house the operational installation together with a safety clearance zone within a security fence. Outside the security fence, there needs to be a 2m wide sterile strip so that the security fence is not compromised. The landscaping area is to provide a screen of trees and shrubs to reduce the visual impact of the AGI by blending in with the surrounding landscape and vegetation character.

### **Camblesforth Multi-junction**

- 7.3.6 The Multi-junction is needed for the development of carbon capture and storage networks. It would provide a point to which future emitters can connect thereby using the Camblesforth-Barmston pipeline as a CO<sub>2</sub> transportation trunk line. The Multi-junction requires 4.25ha, to include 0.89ha for the operational installation, with an additional 3.36ha for security and landscaping.
- 7.3.7 The operational area includes space to initially accommodate two PIG traps; one to collect the PIG from Drax AGI, the other to launch a PIG towards Barmston Pumping Station.
- 7.3.8 The site also includes an area (known as "Area B") for three additional PIG traps for connections to future emitters. This area has not yet been designed because the precise requirements and locations for apparatus required will only be known once there is confirmation of those future third party emitters. In the meanwhile, there is to be implemented an interim landscaping scheme. The operational area includes space to house the operational installation together with a

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<sup>76</sup> Paragraph 6.1.2 and Table 1

safety clearance zone within a security fence, outside which there would be a 2m wide sterile strip so that the security fence would not be compromised. In addition, there would be an area for landscaping.

### **Block Valves**

- 7.3.9 The Block Valves would allow the isolation of sections of the pipeline for operational maintenance and/or in case of a safety incident. Three block valves are required at: Tollingham, Dalton, and Skerne. The block valves are required to be sited at intervals of approximately 15-23km along the pipeline route. The land take requirement for each block valve varies slightly. However, each site requires 0.36ha of land for installation with safety clearance, with additional land needed for the 2m wide security strip and landscaping.

### **The Pumping Station**

- 7.3.10 The Pumping Station is needed to re-pressurise and pump CO<sub>2</sub> out to the offshore pipeline and out to the North Sea storage site. The Pumping Station site has been selected as close to the landfall point as possible, taking into account the natural rate of erosion of the Holderness coast at Barmston. The location has also taken into account responses from local consultation. The Pumping Station site occupies 14.4ha which is needed so that the site can contain four pumps, eight drive units, PIG traps and associated workshops, offices and related buildings, as well as landscaping. The precise design of the Pumping Station is reserved for later approval by the relevant planning authority in accordance with parameter plans to be approved as part of this application.
- 7.3.11 The landscaping would comprise approximately 73% of the whole site. This is to accommodate substantial bunding and planting so that the site would harmonise with the surrounding landscape and be obscured from the villages of Barmston and Fraisthorpe.

### **PERMANENT ACQUISITION OF RIGHTS**

- 7.3.12 Rights in land which are to be acquired permanently are also shown in dark grey on the Land Plans. It is called Permanent Type 2 land in the Book of Reference and amounts to 278 plots. The rights are to be acquired in order to construct, operate and maintain the CCS pipeline [AD-082<sup>77</sup>]. The permanent easement would form a 24.4m wide strip to allow for sufficient space for safe working access and maintenance during the operation of the pipeline. The pipeline would normally be located in the centre of the easement strip.
- 7.3.13 The final strip of land in respect of which new rights would be compulsorily acquired for the pipeline would be 24.4m wide and not the width of the land shown coloured dark grey on the Land Plans

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<sup>77</sup> Paragraph 6.2.2 and Table 2

- 7.3.14 The precise location of the easement strip would depend on the route alignment of the pipeline within the corridor of land on the Land Plans which includes within it lateral Limits of Deviation (LoD) of the pipeline of up to 100m and accommodates 12.2m of permanent rights strip should the pipeline be laid at the extremity of the limits of deviation.
- 7.3.15 The easement strip would be located within the 100m wide corridor which constitutes the lateral LoD and which is necessary to take account of unforeseen routeing and engineering constraints which may be encountered<sup>78</sup>.
- 7.3.16 The Onshore Scheme requires the right to restrict the grantor's use of the land in as much it could damage the Onshore Scheme. Such restrictions include placing anything on the easement land that could cause damage, restrictions on permanent development on the easement land, and restrictions on planting trees and shrubs on the easement land. These rights are necessary to allow National Grid to construct and operate a safe and efficient pipeline.

### **TEMPORARY POSSESSION AND RIGHTS**

- 7.3.17 Temporary possession and rights are also sought for constructing the pipeline, the AGIs and installing remedial land drainage. The 1,012 plots affected are listed in Schedule 9 of the draft DCO. The land that is temporarily required for construction and drainage is shown in light grey on the Land Plans and referred to as "Temporary - general" in the Book of Reference [REP8-023). Land that is only temporarily required for drainage is referred to as "Temporary - drainage" and shown as hatched on the Land Plans. Article 28(7) of the DCO prevents the compulsory acquisition of any land or rights, including the creation of new rights, in the land contained in Schedule 9.
- 7.3.18 Additional land, typically up to 51m, is required at major crossings in in order to accommodate machinery to bore or drill and to build temporary water storage lagoons to hold groundwater which might emanate during construction. Temporary possession of land is also needed on which to store topsoil and construct remedial drainage.<sup>79</sup>
- 7.3.19 Particularly critical is the need to have sufficient land to store and protect the top soil during construction. National Grid will also need temporary possession of the land to enable construction of the remedial drainage. Both are necessary to restore the land into its pre-construction condition.
- 7.3.20 National Grid requires approximately 6.82ha to facilitate construction of the pipeline from the Barmston pumping station to the mean low water mark. This is to accommodate the following: drive pit; tunnel boring / horizontal directional drill rig; control cabin; crane working

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<sup>78</sup> For examples, see Paragraph 6.2.7

<sup>79</sup> A fuller list of activities within the temporary possession land is in AD-082 paragraph 6.3.8

areas; dewatering systems; water tanks; spoil storage; spoil separators; settlement lagoons; materials and pipe storage area; waste storage area; workshops and stores; generators and switchgear; air receivers and compressors; oil stores; welfare facilities; offices; security; access to the drive pit and; parking.

- 7.3.21 Temporary access is required in order to facilitate the construction of the River Ouse crossing and the construction of the Skerne Block Valve.
- 7.3.22 The applicant would also require temporary possession for two construction compounds at Tollingham and Driffield, each of which would need space for working offices and other facilities and to facilitate the construction of the AGIs [AD-082<sup>80</sup>].
- 7.3.23 In addition to the land identified in Schedule 9, National Grid will require temporary possession of all land subject to the permanent acquisition of land and the permanent acquisition of rights in land as listed in Tables 1 and 2 in the SoR to facilitate construction of the pipeline and the AGIs. The intention would be to construct the authorised development under temporary powers and then execute compulsory acquisition powers retrospectively in order that this can be done when the precise "as built" location of the pipeline is known.

#### **CROWN LAND**

- 7.3.24 The applicant is seeking to acquire a permanent easement across two parcels of land, Plots 189 and 1280, to construct, operate and maintain the pipeline, the details of which are to be found in the Book of Reference [REP8-023] and associated Land Plans. Plot 189 of the Order Land forms part of the channel of the River Ouse. Plot 1280 is on the foreshore at Barmston.
- 7.3.25 Plots 740 and 741 form part of the highway verge on the A1079 and were previously Crown Land. The land has now been transferred to the East Riding of Yorkshire Council and the applicant has updated the BoR [REP8-002].
- 7.3.26 The Crown Estate (TCE) confirmed by letter dated 23 April 2015 [CR-018<sup>81</sup>] that it has requested the insertion of a new article in the DCO entitled "Crown Rights" to provide wording which is protective to the interests of the Crown authorities affected by the proposals. The final version of the DCO submitted by the applicant includes such an article [REP8-018][CR-025].
- 7.3.27 TCE also confirmed that for the purposes of s135(2) of the PA2008 it consents to the other provisions of the DCO applying to the Crown interests subject to obtaining Crown consent as secured by Article 55.

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<sup>80</sup> AD-082 paragraphs 6.3.12 , 6.3.14 & 6.3.15

<sup>81</sup> Appendix 8

The applicant has excluded the Crown interest from these plots in part 1 of the Book of Reference. Compulsory acquisition powers are granted over the Order land and the Order land is defined as land and rights described in the Book of Reference. Acquisition of Crown interests are expressly excluded for plots 189 and 1280. The draft DCO does not therefore permit the compulsory acquisition of any Crown interest.

- 7.3.28 The applicant is seeking temporary possession powers over 5 plots of land identified as Crown land, plots 190, 191, 192, 1281 and 1282. TCE are the owners of the Crown interest in these plots and have given consent under s.135(2) for the provisions of the draft DCO applying to Crown interest. Articles 28 & 29 authorise temporary possession of these plots but exercise of these powers is subject to Crown consent as a result of article 55(a).

### **STATUTORY UNDERTAKERS**

- 7.3.29 There are two statutory undertakers for the purposes of s127 and s138 of PA2008 who have made representations and whose interests will be subject to the compulsory acquisition powers; the EA and Network Rail Infrastructure Limited (NR). NR is an affected landowner in that the pipeline would cross the railway in two locations, near Howden Station at Brind and at Hutton Cranswick. The works would comprise both temporary use of NR's land during construction as well as works of a permanent nature.
- 7.3.30 The applicant commented that there are other statutory undertakers whose assets are to be crossed by the authorised development and with whom asset protection arrangements were negotiated. Compulsory acquisition powers are sought in relation to those interests, but they either withdrew their representation or did not make a representation because they are now satisfied with protective provisions contained within the draft DCO or entered into agreements outside the examination.

## **7.4 HOW THE CASE FOR COMPULSORY ACQUISITION WAS EXAMINED**

- 7.4.1 I raised questions in relation to the request for compulsory acquisition powers. These are set out in Appendix D of the Rule 8 letter [PD-004<sup>82</sup>]. The questions covered a range of issues including Crown Land, the extinguishment of private rights of way and the protective provisions of statutory undertakers. The questions also reflected matters raised by affected persons in their representations and the requirements of PA2008. The applicant responded to all the questions in the Written Response at Deadline 1 [REP1-086].

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<sup>82</sup> See Q12.12 - Q12.28

- 7.4.2 A compulsory acquisition hearing (CAH) was held on 5 February 2015. A summary of oral evidence submitted by the applicant is described in [REP3-012<sup>83</sup>]. At the hearing, I pursued a number of matters with the applicant including points about the need for the Multi Junction, the need for flexible drainage areas, whether funding would be available, whether the purposes of the proposed compulsory acquisition justified interfering with human rights of those with an interest in the land affected and further explanations of the position in relation to Crown Land and statutory undertakers [REP3-14].

## **THE APPLICANT'S CASE**

### **General**

- 7.4.3 The Onshore Scheme is part of the wider Yorkshire and Humber CCS Transportation and Storage Project ("the Project") which also incorporates an "Offshore Scheme". In summary, the Offshore Scheme is the continuation of the pipeline approximately 90km offshore and then down to saline aquifer 5/42 approximately 1km beneath the seabed. The Offshore Scheme is not part of the DCO, and will be consented under different consenting regimes.
- 7.4.4 The Onshore Scheme comprises a high pressure cross-country pipeline, of approximately 68 km in length with an external diameter of up to 610 mm in diameter, with connecting pipelines and associated above-ground installations (PIG Traps, a multi-junction, three block valve sites and an onshore pumping station) totalling approximately 74 km in length.
- 7.4.5 The Onshore Scheme is to transport dense phase (liquid) CO<sub>2</sub> at a pressure up to 135 barg from a new power station at Drax, known as the White Rose CCS Project, to a pumping station at Barmston, and then to a landfall point on the Holderness coast, where it is to be pumped out to a subsea storage site underneath the North Sea.

### **Documentation**

- 7.4.6 National Grid has submitted the following documents relating to the powers of compulsory purchase sought as part of the Onshore Scheme: the Statement of Reasons [AD-082]; land plans [AD-006] showing the land over which the various interests or rights in land would be acquired; a Funding Statement [AD-083] explaining how the proposals contained in the DCO would be funded; a Book of Reference [AD-084] containing details of the interests or rights in land which may be acquired and the names and addresses of all those who may be affected by the proposed acquisition of those interests or rights; a Need Case [AD-176] providing the case as to why the Onshore Scheme is necessary and a Proposed Scheme Report [AD-182 to AD-186] which documents the consideration of scheme alternatives.

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<sup>83</sup> Pp 45 - 60

- 7.4.7 Written responses made by the applicant to the objections to compulsory acquisition are contained in REP1-092.
- 7.4.8 The description of the proposal for the use and development of the land is given earlier in Chapter 2 of the report
- 7.4.9 The need for the Y&H CCS Pipeline has been described earlier in Chapter 4 of the report.
- 7.4.10 The proposed pipeline route has been developed from an initial preferred route corridor that has been refined following desk-based studies, environmental surveys and engineering surveys. Routing has specifically avoided centres of population and wherever possible, sites of environmental value. The proposed route also minimises the number of major crossings (combined crossings are used where practicable) and avoids areas liable to landslip, subsidence or other instability, as far as practicable.
- 7.4.11 On either side of the proposed pipeline route is up to an additional 50m limit of lateral deviation. This additional tolerance is to allow for in-field route alterations that may arise once the project is being constructed, such as, for example, adverse ground conditions This tolerance is known as the 'limits of deviation' or LoD and would allow the pipeline to be routed anywhere within a c.100m wide corridor.
- 7.4.12 The preferred corridor determined the initial broad AGI locations, with consideration of basic operability and risk criteria. Site selection was further refined to take into account factors such as the availability of a suitable sized plot of land, ease of access and environmental considerations.

### **Sections of the route**

#### ***White Rose to Camblesforth***

- 7.4.13 A total area of approximately 0.78ha of agricultural land is to be acquired permanently for the Drax PIG Trap adjacent to the site of the White Rose power station, together with a 0.25km pipe to the White Rose CCS Project. Adjacent to the site for the Drax PIG Trap is an area of 6.87ha that has been identified for temporary construction use. This comprises rough grassland behind the main site of Drax Power Station.
- 7.4.14 From the Drax PIG Trap the pipeline runs for approximately 5.6km in a broadly southerly direction (having initially ran north) towards the site of the Multi-junction. This land comprises flat open arable farmland with several minor county roads and drainage dykes. Some of these drainage dykes provide connections for post-construction drainage. Major crossings include Carr Dyke, a former railway line, and the A645.

### ***Camblesforth to Tollingham***

- 7.4.15 The Multi-junction site at Camblesforth lies at the southern end of an unclassified road, comprising a flat, low lying agricultural field bordered by trees and thick hedges. The area of the site for the Multi-junction is approximately 3.5ha. To the south and west of the proposed Multi-junction site is an additional 4 ha identified as a temporary construction site for construction of the Multi-junction. From the Multi-junction, the pipeline heads approximately 20km north-eastwards towards the site for the Tollingham Block Valve through flat open arable land that is crossed by minor county roads and drainage dykes.
- 7.4.16 In the area are also small woodlands predominantly used for shooting but the pipeline has been routed away from these. In this section, significant crossing points include under the A645, the River Ouse, a National Grid Gas Transmission pipeline, the A63, a Government Pipeline Storage System (GPSS) pipeline, the Selby to Hull railway line at Brind, the River Foulness, as well as numerous open land drains notably Featherbed Drain, a Local Wildlife Site
- 7.4.17 On either side of the River Ouse, the application area widens to accommodate the necessary land for crossing under the river. There is also a proposed access point to the pipeline route from Main Street in Barmby on the Marsh along Gateland Field to the north bank of the River Ouse.

### ***Tollingham to Dalton***

- 7.4.18 The location of the site for the Tollingham Block Valve is the south east corner of an arable field to the south of Skiff Lane and west of the former RAF Holme-on-Spalding-Moor airfield. The site comprises 0.86ha.
- 7.4.19 Adjacent to the north and west of the Tollingham Block Valve site is an area of flat arable land of approximately 2.15ha that is identified for a temporary yard and fabrication area for construction of the block valve. Near to Tollingham Block Valve, on the site of a former airfield at the end of Skiff Lane, is an industrial estate. The site is bordered by a concrete perimeter road, to the west of which is a large, open, flat agricultural field that has been identified as the location for one of two temporary storage and construction office compounds. This compound site comprises 8.33ha.
- 7.4.20 From Tollingham Block Valve the pipeline continues approximately 19km north east through open arable farmland towards Market Weighton. It is has been routed particularly to avoid an area of ponds between Skiff Lane and Lock Lane. There are also several open field drains into which it is proposed to connect post-construction drainage.
- 7.4.21 After crossing under the A1034, the pipeline route topography rises markedly on the edge of the Yorkshire Wolds, although the land use continues to be predominantly arable farmland. From here to the

Dalton Block Valve site the landscape is characterised by rolling hills, large open fields, small dales with single track roads, and the occasional block of woodland used for shooting.

### ***Dalton to Skerne***

- 7.4.22 The site for the Dalton Block Valve is in the south east corner of an arable field and comprises 0.97ha. Adjacent to the north and west of the Dalton Block Valve site is an area of flat arable land of approximately 2.43ha that is identified for a temporary yard and fabrication area for construction of the block valve.
- 7.4.23 From Dalton Block Valve the pipeline then heads approximately 15km north east through further arable farmland, towards the site for the Skerne Block Valve. The area is characterised initially by open arable fields and rolling hills of the Yorkshire Wolds, but after approximately halfway through this section the land starts to drop down into the flat low-lying land of the River Hull valley.
- 7.4.24 Significant crossing points include under the B1248, the Middleton to Kilnwick Road, Bracken Beck, the A164, Driffield-Hutton Cranswick railway line south of Knorka Dike. At Bracken Beck the pipeline has been routed through a pinch point between woodland (a Local Wildlife Site) and a plantation. Just beyond Bracken Beck, the land elevation drops down from the Yorkshire Wolds into the River Hull valley. There is a farm track from Skerne heading south-east along the line of a drain that is intended to be the access route to the Skerne Block Valve.

### ***Skerne to Barmston Pumping Station***

- 7.4.25 On the north-east side of Driffield, approximately 3km north of the pipeline route, is a former Ministry of Defence barracks that is intended to be the second of two temporary storage and construction office compound. The site currently comprises derelict buildings, tracks in disrepair and rough grassland to an extent of 13.13ha.
- 7.4.26 The Skerne Block Valve comprises 0.85ha and is located in the north east corner of an arable field to the south of an access track for Copper Hall. From Skerne Block Valve the pipeline continues approximately 13km east towards Wansford village and then onto the site for the Pumping Station for a length of approximately 13km. Adjacent to the north and west of the Dalton Block Valve site is an area of flat arable land of approximately 3.38ha that is identified for a temporary yard and fabrication area for construction of the block valve. The land here continues to be predominantly open arable land, comprising the upper valley of the River Hull.
- 7.4.27 Significant crossing points include under Main Drain, the River Hull, the Driffield Canal to the South of Wansford, the Kelk Beck SSSI, Nutholme Dyke, Gransmoor Drain (avoiding Barf Hill Local Wildlife Site), Burton Drain at Carr Hill, and the A165 Bridlington Road. At Wansford, on either side of the River Hull and Driffield Canal, the

application area includes a large arable field to accommodate land necessary for constructing under these crossings.

- 7.4.28 The site for the Pumping Station at Barmston comprises 14.74 ha of arable farmland and is located in two fields to the east of Sands Road, south of the village of Fraisthorpe. To the west, south, and east of the proposed Pumping Station site is an area of approximately 56ha that is to be the site of temporary construction compounds for the construction of the Onshore pipeline, the Pumping Station, and the crossing of the Onshore pipeline through the intertidal zone to the mean low water mark. The land is open and currently in agricultural use.
- 7.4.29 From the Pumping Station, the pipeline route heads east and under Barmston Sands and then out to a landfall point north east of Hamilton Hill at the mean low water mark. An area of 6.82ha has been defined in the Deemed Marine Licence (DML) for the beach crossing as being potentially necessary for the construction of the pipeline through the intertidal zone

#### **JUSTIFICATION FOR INTERFERENCE WITH HUMAN RIGHTS**

- 7.4.30 The European Convention on Human Rights (the "Convention") was applied within UK domestic law by the Human Rights Act 1998.
- 7.4.31 National Grid is satisfied that, although the European Convention on Human Rights (the Convention) is likely to be engaged, the Onshore Scheme will not conflict with Convention rights and will be proportionate in that there is a compelling case in the public interest for the Onshore Scheme which outweighs the impact on individual rights. In this context, it is relevant that those affected will be entitled to compensation.
- 7.4.32 With regard to Article 1, First Protocol and Article 8, National Grid has weighed any interference with these Convention rights as a result of including compulsory powers within the DCO with the potential public benefits if the DCO is made. First, National Grid considers that there would be very significant public benefit arising from the grant of the DCO. That benefit can only be realised if the DCO includes the grant of powers of compulsory acquisition and temporary use. National Grid has concluded that the significant public benefits outweigh the effects of the DCO upon persons who own property in the Order Land such that there would not be a disproportionate interference with their Article 8 and Article 1, First Protocol rights. Second, those affected by the exercise of compulsory acquisition or temporary use powers would be entitled to compensation and National Grid has the resources to provide such compensation.
- 7.4.33 As for Article 6, third parties have been able to make representations on the application for the DCO whilst it is being prepared. In accordance with Part 5 of the 2008 Act, National Grid consulted persons set out in the categories contained in section 44 of the 2008

Act. This included the known owners and occupiers of the Order Land and those who might be able to make claims either under section 10 of the Compulsory Purchase Act 1965 in respect of injurious affection, or under Part 1 of the Land Compensation Act 1973.

- 7.4.34 The beneficiaries of restrictive covenants and other rights that would be overridden by the exercise of powers in the DCO would be capable of making claims under the statutory compensation code<sup>84</sup>.
- 7.4.35 Furthermore, representations can be made by way of objections to the Application in response to any notice given under section 56 of the 2008 Act ('Notifying persons of accepted application'). The 2008 Act provides for a detailed examination of any application for a DCO by an independent Examining Authority. The examination includes careful scrutiny of any powers of compulsory acquisition or other compulsory powers, to ensure that they are justified and proportionate. Although the examination is a process mainly conducted in writing, where the Examining Authority received one or more requests for a compulsory acquisition hearing from affected persons within the date specified, it must cause a hearing to be held. All affected persons are invited to these compulsory acquisition hearings, and have the opportunity to make oral representations about the compulsory acquisition requests.
- 7.4.36 Should the DCO be made, a person aggrieved may challenge the DCO by judicial review in the High Court if they consider that the grounds for doing so are made out. In relation to disputes about compensation, affected persons have the right to apply to the Upper Tribunal (Lands Chamber), an independent tribunal.
- 7.4.37 For these reasons, National Grid considers that the inclusion of powers of compulsory acquisition would not breach the Convention rights of those whose are affected and that it would be appropriate and proportionate to make the DCO, including the grant of powers of compulsory acquisition.

#### **AVAILABILITY AND ADEQUACY OF FUNDS**

- 7.4.38 The applicant's case on the availability and adequacy of funds is set out in the Funding Statement [AD-083]. The ultimate parent and controlling company of the applicant is National Grid plc which owns and operates the electricity and gas transmission infrastructure in Britain and the North Eastern states of the US. The turnover for National Grid plc for the year ending 31 March 2013 was over £14 million with an operating profit of over £3.7 million<sup>85</sup>.
- 7.4.39 A larger part of the work so far has been funded by a grant from the European Union's Energy Programme Recovery (EEPR) funding

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<sup>84</sup> No code exists as such but it is generally taken to mean the law as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law.

<sup>85</sup> AD-083 Table 18

programme to the Don Valley Power Project (DVPP) which uses full carbon capture. The EPR grant provided National Grid with £52 million as at May 2014. The grant covered other components of the CCS project such as drilling an appraisal well in the North Sea and subsequent analysis.

- 7.4.40 It is anticipated by the applicant that the EPR funding will continue through the examination stage in 2015, being followed by a DECC financed Front End Engineering and Design (FEED) project for the White Rose CCS Project which would include the CCS pipeline and is due to be completed in late 2015.
- 7.4.41 The applicant estimates that the cost of acquiring the necessary land and land rights under compulsion is assessed at approximately £5,600,000. This figure includes the cost of the land and rights, anticipated disturbance, crop loss, injurious affection, blight and land agents' fees. These costs are included in the project capital and operating costs budgets set out in the Funding Statement<sup>86</sup>.
- 7.4.42 It is expected that the capital costs of the transportation and storage infrastructure would be around £750 million. Operating costs are expected to be around £30 million per annum and decommissioning costs are expected to be around £100 million. Following a positive investment decision by the board of National Grid plc funding would be made available through capital raised by National Grid plc to construct the Onshore Scheme. This investment would include sufficient funds to meet National Grid's compensation liabilities associated with land acquisition and within a time frame to enable the exercise of compulsory purchase powers.
- 7.4.43 It is intended that the construction of the Onshore Scheme will be funded by means of raising finance from within National Grid plc. National Grid plc is used to financing major infrastructure projects for new gas pipelines and electricity transmission projects and National Grid plc invested £2.4 billion in the year ending 31st March 2013.

## **OBJECTIONS**

- 7.4.44 Objections were received from The Glendon Estate [RR-003], Mr Riby [RR-006], Mr Warkup [RR-008], Messrs Wright [RR-084], Mr & Mrs Atkinson [RR-029], Mr SR and Mr RR Craven [RR-033], The Trustees of the Market Weighton Church Estate [RR-034], R G Kendall and Sons Ltd [RR-035], Mrs E M Payne [RR-036], Mr J P Thompson and Mrs O J Thompson [RR-037], Mr J A Southwell [RR-082], Mr R Hall [RR-083], Mr & Mrs Sawyer [RR-039], Mr & Mrs Chapman [RR-040], J H A Graham & Sons [RR-042], S G Prescott & Sons [RR-043], A J & P H Blacker (t/a B B Farms Ltd) [RR-041], D P Hawcroft, A M Hawcroft [RR-045], T R Hawcroft, W M Hawcroft [RR-046], Mr D B Hiles and Mr M J Hiles [RR-048], Mr A Gladstone, Mrs E P Gladstone, Mr N A

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<sup>86</sup> Section 6

Gladstone and Mrs J J Gladstone[RR-049], Mr G Foster (T/A PC Foster & Sons) [RR-060], Mr P S Kealey [RR-061], Mr D Conlan [RR-062], Mr A Williamson [RR-063], Mr R Burton (T/A M Burton & Sons) [RR-064], G O Morley & Co [RR-065], Mr D W Proctor [RR-066], Mr S Appleyard [RR-067], Mr D A Jackson [RR-068], Andrew, Adam and Wendy Ashton [RR-050], R, J and J Bell [RR-051], John and Janet Ellis [RR-052], R Gowthorpe [RR-053], Jane Moore [RR-054] and in part by Paula Newton [RR-055] and Edith, Mark and Stephen Ulliyott [RR-056], E A Copeland & Sons [RR-073], The Trustees of the Burton Agnes Estate Trust [RR-074], the Hon Mrs S Cunliffe-Lister [RR-076], The Rt Hon Lord Manton [RR-079], Mr I Gilliat [RR-077], W Clifford Watts Ltd [RR-085], Dr C Vincini [REP1-009][REP3-006], P H & A J Blacker (BB Farms Ltd) [REP1-024], Mr A Marsland [REP3-004].

### **Permanent Acquisition of Land**

- 7.4.45 The applicant has sought to acquire all interests and rights in 10 Plots of land<sup>87</sup> as shown in Table 1 of the Statement of Reasons. As stated earlier, plot 1265 is described in the Book of Reference for permanent acquisition of rights, not land.

#### ***The Objectors' cases***

- 7.4.46 Objections were received from Claire Jackson on behalf of the Glendon Estate (Plots 1263 & 1265), Peter Mawer on behalf of the Glendon Estate (Plots 1263 & 1265), Christopher Marshall (Plots 1263 & 1265), Geoffrey Riby (Plot 1263), Peter Mawer on behalf of Geoffrey Riby (Plot 1263), Graham Warkup (Plot 1268), Peter Mawer on behalf of CN Warkup & Sons (Plot 1268).
- 7.4.47 The objections from C J Marshall, the Glendon Estate, G L Riby and G Warkup included concerns about the area and location of land to be compulsorily acquired especially in relation to the Barmston Pumping Station, the type, extent and duration of construction works, drainage and access. Following negotiations with the applicant, the objections were subsequently withdrawn<sup>88</sup>.
- 7.4.48 S G Prescott and Sons (Plot 845): main concerns were the length of the DCO which is being sought by the developer; the impact on the farm business during the period of the option and construction; reinstatement of land following construction, particularly reinstatement of land drainage; the time that the trench will be open during construction; impact on ecology and wildlife; impact on archaeology and the width of the easement which the applicant is seeking.

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<sup>87</sup> Statement of Reasons Table 1

<sup>88</sup> EV-016

## **Permanent acquisition of rights**

### ***The Objectors' cases***

- 7.4.49 Messrs Wright [RR-084][REP1-36] (Plots 330, 337) submitted that there were significant concerns over the effect the scheme would have on drainage in this low lying area. Good drainage is fundamental and there are concerns about the long term effect the scheme would have on this area which is presently well drained. The proposed scheme runs through the middle of the farm and dissects a substantial field; it would therefore have a considerable impact on the farming business and future development plans. Despite requests to re-route the pipeline so it is more akin with the boundaries of the land there have been no changes proposed. Detailed proposals on how the soil would be stripped, stored, managed and replaced have not been provided by the applicant.
- 7.4.50 The acquisition of the freehold title to the land in question by compulsion is unduly onerous. Acquiring the legal rights to install, inspect, maintain and repair the apparatus would be sufficient. At the present time all reasonable alternatives to compulsory acquisition have not been explored. Either side of the proposed pipeline route there is an additional 50m limit of lateral deviation which is proposed which would allow the pipeline to be routed anywhere within a c.100m wide corridor. This is unduly onerous. The proposed easement width is 24.4 metres; this is excessive for a 24" diameter pipeline. The applicant is proposing that their compulsory rights are exercisable for 8 years from award of the DCO; this is an excessive length of time to blight a large area of land and restrict any potential development. There are significant concerns with regards to the restrictions on development on the land and the effect the scheme would have on future developments.
- 7.4.51 The objectors comment further that the White Rose CCS Project will make its Final Investment Decisions in the middle of 2016 following confirmation from the UK Government that the necessary funding is to come from the UK CCS Commercialisation Programme. The DCO should not be granted until funding for the White Rose CCS Project is confirmed as the projects are interlinked. NG are undertaking a FEED study to ascertain the costs associated with the proposed Onshore Scheme, and state that following a positive investment decision by the board of NG plc, funding would be made available through capital raised by NG plc to construct the Onshore Scheme; insufficient evidence has been provided to ascertain that there is a reasonable prospect of the requisite funds becoming available.
- 7.4.52 Mr & Mrs Atkinson [RR-029][REP1-035] (Plots 380, 384) echoed the above points added to which were concerns about the lack of detailed drainage surveys, the identification of a Temporary Working Area which is felt to be unnecessary, the lack of a detailed survey, especially given that ancient hedgerows will be destroyed and the lack of biosecurity for the farm.

- 7.4.53 Mr S R Craven and Mr R R Craven [RR-033][REP1-031] (Plots 665, 670) were concerned about the proposed eight year period from award of the DCO for compulsory rights to be exercisable being too long; the route of the proposed pipeline should be aligned so as to cause the minimum amount of disturbance to agricultural operations; prior to the commencement of any work the existence of any field underdrainage systems should be established and a scheme of underdrainage rectification or reinstatement should be agreed to the satisfaction of the affected party; any works relating to the proposed scheme should be carried out when ground conditions are suitable; and, topsoil should be stored separately at the side of the pipeline during construction and should be replaced to the satisfaction of the affected party.
- 7.4.54 These points were echoed by the Trustees of the Market Weighton Church Estate [RR-034](plot 650), R G Kendall and Sons Ltd [RR-35] (Plots 767, 768, 771, 786), Mrs E M Payne [RR-036][REP1-103?](Plots 522, 528) Mr J P Thompson and Mrs O J Thompson [RR-037][REP1-033] (Plots 556, 562). Mr J A Southwell [RR-82] (Plot 733) was concerned about the second point and the last two points raised above. Mr R Hall [RR-083][REP1-032] (Plot 945) objected on the basis of the last four points raised above. In addition, Mr & Mrs Thompson [REP3-002] also wished to see the route of the pipeline realigned to minimize the impact on the site of Romano-British pottery kilns at Throlam, Holme-on-Spalding Moor and about which a report by Dr P Halkon was submitted by them demonstrating the archeological significance of the area known as Pot Hill.
- 7.4.55 Mr & Mrs Sawyer [RR-039] (Plots 756, 758, 761) main concerns were the time limits of the DCO which is being sought by the developer; the impact on their farm business during the period of the option and construction; based on the proposed working width, the commercial viability of the farming the land affected during construction because of the small areas left by the working width; reinstatement of land following construction, particularly the need to restore the land so as to recreate the natural land drainage ability; the time that the trench will be open during construction; impact on ecology and wildlife; impact on archaeology; and the width of the easement which NGC are seeking. Some of those concerns were repeated by Mr & Mrs Chapman [RR-040] (Plot 1087), J H A Graham & Sons [RR-042] (Plot 1194) and S G Prescott & Sons [RR-043] (Plot 844). A J & P H Blacker (t/a B B Farms Ltd) [RR-041] (Plots 937, 940) voiced similar concerns and added the ability of future development to take place and whether a "lift and shift" clause would be included.
- 7.4.56 D P Hawcroft [RR-044] (Plots 508, 533, 537, 545) together with A M Hawcroft [RR-045] (Plot 508), T R Hawcroft and W M Hawcroft [RR-046] (Plots 502, 513), expressed concern about the effect of the proposed pipeline on the land drainage of the retained farm; the effect on possibility of further development of the farming or non-farming business or developing the land for wind turbines, solar panels and/ or other energy uses, the effect of the proposed pipeline on the retained

land and farmstead and on biodiversity and environmental matters affecting the retained land. These representations were repeated by Mr D B Hiles and Mr A R Hiles [RR-047] (Plots 774, 775, 780), Mr Alan Roy Hiles, Mr Andrew Robert Hiles, Mr D B Hiles and Mr M J Hiles.[RR-048] (Plots 774, 775, 780), Mr A Gladstone, Mrs E P Gladstone, Mr N A Gladstone and Mrs J J Gladstone [RR-049] (Plots 1153, 1158), Mr G Foster (T/A PC Foster & Sons) [RR-060] (Plot 1090), Mr P S Kealey [RR-061] (Plots 416, 421, 432), Mr D Conlan [RR-062] (Plot 1090), Mr A Williamson [RR-063] (Plots 486, 489), Mr D W Proctor [RR-066] (Plot 186)

- 7.4.57 Mr R Burton (T/A M Burton & Sons) [RR-64] (Plot 73) and G O Morley & Co [RR-065] (Plot 1222) also submitted representations as outlined above. Mr A Marsland [REP3-004] (Plots 128, 129) expressed concern about the timing of construction in relation to Rural payments and the proximity of a proposed fishing lake to the pipeline. The Book of Reference and Land Plans indicate that the plots associated with those representations appear in Schedule 9: Land of which Temporary Possession may be taken. The comments made in the representations are taken into account below in my conclusions about the application for permanent rights.
- 7.4.58 Mr S Appleyard [RR-067] and Mr D A Jackson [RR-068] submitted relevant representations but do not appear in the Book of Reference, but I have also taken their objections into account.
- 7.4.59 Andrew, Adam and Wendy Ashton [RR-050] (Plots 468, 471 480) stated that the reference to the CLA/NFU Agreement in the Heads of Terms for an agreement to grant an easement and the subsequent option agreement is considered to have no legal standing and should not be referred to in legal documentation. The Grantee and its contractors must be required to identify all existing field drainage potentially affected by the proposed works prior to construction and subsequently prepare a scheme of drainage reinstatement which must be agreed with the owners and occupier(s) of the land. The land owners/occupiers must be permitted the right to instigate temporary cessation of any works when they consider ground conditions are unsuitable. These representations were repeated by R, J and J Bell [RR-051] (Plots 643, 655, 677, 686, 694) John and Janet Ellis [RR-052] (Plots 650, 683, 686, 690) R Gowthorpe [RR-053] (Plots 627, 637), Jane Moore [RR-054] (Plots 655, 677) and in part by Paula Newton [RR-055] (Plots 722, 725) and Edith, Mark and Stephen Ulllyott [RR-056] (Plot 876).
- 7.4.60 Trustees of the Burton Agnes Estate Trust [RR-074] (Plots 1211, 1223), the Hon Mrs S Cunliffe-Lister [RR-076] (Plot 1203), W Clifford Watts Ltd [RR-085] (Plots 1203, 1211) objected on the basis of the impact of the pipeline on the sand and gravel operations and the sterilization of mineral deposits.

## **7.5 THE EXAMINING AUTHORITY'S CONCLUSIONS**

- 7.5.1 I have considered the application documents and all of the representations submitted in the examination on compulsory acquisition matters in the light of s122, s123 and s120 of the PA2008, the Human Rights Act 1998 (HRA1998) and DCLG Guidance<sup>89</sup>; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 7.5.2 There are representations from statutory undertakers which have not been withdrawn and therefore s127 of the PA2008 is engaged in the consideration of the application. There are also relevant statutory undertaker rights and apparatus on land that is the subject of compulsory acquisition of new rights under the draft DCO. Section 138 of the PA2008 is therefore also engaged, and I have considered the application and representations accordingly.
- 7.5.3 The draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until a view has been formed on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 7.5.4 In my conclusions to Sections 4 and 5 of this report, I have reached the view that development consent should be granted. The question therefore that I address here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

## **THE EXAMINING AUTHORITY'S RESPONSE TO OBJECTIONS**

- 7.5.5 I have read through all the objections received. Many of the issues raised by objectors have also been considered by me when examining the planning issues arising in relation to consideration of the grant of the draft DCO. The objections are considered here in the context of the application for the grant of CA powers and for the grant of powers of temporary possession under Articles 28 and 29 of the draft DCO. I have examined the application for the grant of CA powers against the tests set out in the PA2008 (s122 and s123) and with regard to the provisions of the Human Rights Act 1998. Similarly, I have had regard to the Human Rights Act in considering the application for the grant of powers of temporary possession and also the need and justification for such powers.

### **Samantha Butler on behalf of S G Prescott and Sons (Plot 845)**

- 7.5.6 So far as the 8 year commencement period is concerned, the pipeline is initially required to transport CO<sub>2</sub> from the White Rose Carbon

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<sup>89</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition of land – September 2013

Capture power station to the storage site beneath the North Sea. The developers of the power station, CPL, estimate that operations will commence and gas begin to flow in 2021, subject to consent being obtained and assuming a 5 year construction period. It is estimated by NG that the pipeline would take about one to two years to build. NG intends to construct the pipeline using the powers which go together with temporary possession and then, once it is completed, to acquire the relevant interests compulsorily.

- 7.5.7 I consider that the advantages of the unusually long lead in period of 8 years are that it would allow a longer period to negotiate with landowners which, in turn, may avoid unnecessary compulsory acquisition; there would be more precision about the land to be taken because the route would be "as built", rather than "as planned"; and there would be a safety period should there be any slippage with the CPL power station. Therefore, although sympathetic to the objections made on the basis of blight and uncertainty, I agree with the applicants that a period of commencement of 8 years should be included in the DCO.
- 7.5.8 I have noted that the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 were revoked by the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015/462, and that regulation 6 of the 2015 regulations replicates the 2010 regulations and provides that notice to treat must be served before the end of a 5 year period beginning on the date on which the order granting development consent is made.
- 7.5.9 Nevertheless, the effect of s154(3)(a) and (b) of PA2008 is to enable the SoS to grant a longer or shorter period should it be considered necessary. In this particular case, for the reasons given above, I recommend a period of 8 years.
- 7.5.10 The CoCP sets out in detail how the applicant intends to negotiate with farmers affected by the pipeline construction which would include the length of time during which the trench would remain open. The applicant would review the pre-entry arrangements with the landowner and compensation would be payable for physical damage where it cannot be made good. Compensation would also be considered where severed land is identified and losses incurred. The CoCP is secured by Requirement 14 (Schedule 3) in the DCO and I have no reason to doubt its effectiveness. No doubt disturbance would occur to the farming activities but whilst acknowledging the objectors position, I accept the need for the interests to be interfered with in order that the proposed development may proceed.
- 7.5.11 Habitat and protected species surveys were undertaken by the applicant and the effects assessed. These included hedgerow surveys. As reported above in the Biodiversity section, mitigation measures provided for in the CoCP would be implemented and, in my opinion, no unacceptable impacts would occur. Archaeology and cultural heritage

assets were assessed in the ES. Where archaeological assets were unavoidably included within the pipeline envelope, mitigation has been proposed in the form of archaeological excavation and recording. These measures have been incorporated into the CoCP. I have no reason to doubt the effectiveness of the mitigation measures and I do not accept that the effects on habitats, protected species or archaeological assets to be sufficient reason to withhold granting the DCO, including the CA powers sought.

- 7.5.12 In the absence of substantive evidence to the contrary, I agree with the applicant's assessment of the need for the proposed width of the permanent easement strip. NG states that the normal working width for laying a 610mm pipeline is 36m to accommodate the storage of trench material, subsoil and topsoil, the running track, pipe welding and laying activities. The 100m wide strip would be needed to take into account lateral variations due to ground conditions such as unforeseen unstable soils, localised contaminated land, groundwater, undiscovered archaeological features and landowner requirements in order to minimise the effects of the operation on access, drainage or other aspects of a farm business<sup>90</sup>. Following construction of the pipeline, the permanent 24.4m wide easement would be required to provide an adequate width to ensure sufficient space would be available for undertaking maintenance work safely. It would allow the applicant a right of access along the pipeline to gain access to sections of the pipeline for inspection and maintenance. To protect the pipeline, any such access would require vehicles to run adjacent to the pipeline but not directly over the pipe, the easement therefore would allow for this. I see no reason not to recommend the grant of the DCO, including the CA powers sought, on the grounds of the width of the permanent easement.

**Messrs Wright [RR-084][REP1-36] (Plots 330, 337)**

- 7.5.13 I have dealt with the 8 year commencement period above.
- 7.5.14 In my view, the implementation of the CoCP, the Drainage Strategy and the right to compensation should enable concerns about effects of the proposal on drainage, re-instatement and treatment of topsoil to be met. The need for compulsory acquisition powers for freehold land parcels are only required for the AGIs<sup>91</sup>. The applicant is seeking compulsory acquisition powers for easement rights in land for the pipeline which would allow rights to, inter alia, install, inspect, maintain and repair the apparatus and I have dealt with the objections to the easement width above. I consider that the proposed c.100m Limits of Deviation (LoD) is necessary in the DCO to allow for deviation from the proposed pipeline alignment without having to seek additional permission /consent that may otherwise be required for route amendments due to the local ground conditions.

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<sup>90</sup> AD-179 Paragraphs 2.5.1 - 2.5.4

<sup>91</sup> Although the plot numbers referred to in this objection do not involve compulsory acquisition of land.

7.5.15 Given the resources available to the applicant and its profitability and also the financial backing of DECC, all of which is explained in its submissions, and the fact that there has been no substantive evidence to challenge those claims, I have no reason to doubt the funding of the scheme.

**Mr & Mrs Atkinson [RR-029][REP1-035] (Plots 380, 384)**

7.5.16 I have dealt with drainage, biodiversity, the LoD, funding and the 8 year commencement period above. I shall deal with the 8 year commencement period in the section on the draft DCO.

7.5.17 The Order limits are relatively wider on the objectors' land because access was not permitted to carry out a wider survey in order to prepare a drainage scheme and where the outfall for the land drainage would be situated. The proposed Flexible Drainage Area takes this into account.

7.5.18 Biosecurity would be implemented according to Defra advice as provided for in paragraph 14.2.5 of the CoCP. I have no reason to recommend withholding the DCO, including the CA powers sought, because of the above issues.

**Mr S R Craven and Mr R R Craven [RR-033][REP1-031] (Plots 665, 670), the Trustees of the Market Weighton Church Estate [RR-034](plot 650), R G Kendall and Sons Ltd [RR-35] (Plots 767, 768, 771, 786), Mrs E M Payne [RR-036][REP1-103](Plots 522, 528) Mr J P Thompson and Mrs O J Thompson [RR-037][REP1-033] (Plots 556, 562), Mr J A Southwell [RR-82] (Plot 733), Mr R Hall [RR-083][REP1-032] (Plot 945) Mr & Mrs Thompson [REP3-002]**

7.5.19 I have dealt with drainage and archaeological issues and the 8 year commencement period above.

7.5.20 I am satisfied that the implementation of the CoCP would minimise the amount of disturbance to agricultural operations and I have no reason to doubt its effectiveness. A degree of disturbance would be likely to occur to the farming activities but, whilst acknowledging the objectors' position, I accept the need for the interests to be interfered with in order that the proposed development may proceed and note that compensation could be payable under the statutory compensation code.

**Mr & Mrs Sawyer [RR-039] (Plots 756, 758, 761), Mr & Mrs Chapman [RR-040] (Plot 1087), J H A Graham & Sons [RR-042] (Plot 1194), S G Prescott & Sons [RR-043] (Plot 844) and A J & P H Blacker (t/a B B Farms Ltd) [RR-041] (Plots 937, 940)**

7.5.21 I have dealt with the 8 year commencement period above and have already considered issues relating to the width of the easement strip, severed farmland, archaeology, biodiversity and funding. I have also considered the disturbance which could occur to farming activities

during the construction of the pipeline and noted the provision for compensation referred to in the DCO.

- 7.5.22 A landowner's claim for compensation under the CPO compensation code, will include the ability to claim for loss of development opportunity to the extent that can be demonstrated. A "lift and shift" clause is not included in the DCO but in the circumstances of the case I am satisfied that CA powers could be granted.

**D P Hawcroft [RR-044] (Plots 508, 533, 537, 545) together with A M Hawcroft [RR-045] (Plot 508), T R Hawcroft and W M Hawcroft [RR-046] (Plots 502, 513), Mr D B Hiles and Mr A R Hiles [RR-047] (Plots 774, 775, 780), Mr Alan Roy Hiles, Mr Andrew Robert Hiles, Mr D B Hiles and Mr M J Hiles.[RR-048] (Plots 774, 775, 780), Mr A Gladstone, Mrs E P Gladstone, Mr N A Gladstone and Mrs J J Gladstone [RR-049] (Plots 1153, 1158), Mr G Foster (T/A PC Foster & Sons) [RR-060] (Plot 1090), Mr P S Kealey [RR-061] (Plots 416, 421, 432), Mr D Conlan [RR-062] (Plot 1090), Mr A Williamson [RR-063] (Plots 486, 489), Mr D W Proctor [RR-066] (Plot 186)**

- 7.5.23 I have dealt with issues of drainage, land re-instatement and other elements of the environmental effects of the scheme above.

- 7.5.24 As stated above, a landowner's claim for compensation under the statutory compensation code will include the ability to claim for loss of development opportunity to the extent that can be demonstrated. For example, the development opportunities foregone could include wind turbines or a fishing lake. National Grid will work with landowners and occupiers to keep to a minimum any impact on the retained land caused by the pipeline. Moreover, the applicant will also give consideration to the provision of compensation to landowners and tenants for losses on submission of a substantiated claim. Where compensation is not agreed then a claim for the compensation is to be substantiated and assessed through the Upper Tribunal (Lands Chamber) can be pursued in the usual way. Accordingly, I have no reason to recommending withholding the grant of the DCO.

**Andrew, Adam and Wendy Ashton [RR-050] (Plots 468, 471 480), R, J and J Bell [RR-051] (Plots 643, 655, 677, 686, 694)) John and Janet Ellis [RR-052] (Plots 650, 683, 686, 690) R Gowthorpe [RR-053] (Plots 627, 637), Jane Moore [RR-054] (Plots 655, 677) and in part by Paula Newton [RR-055] (Plots 722, 725) and Edith, Mark and Stephen Ulliyott [RR-056] (Plot 876).**

- 7.5.25 I have dealt with drainage and the CoCP above.

- 7.5.26 The applicant does not propose to remove reference to either CLA or NFU from the voluntary agreements in which case I see no reason to recommend withholding the grant of CA powers over this land which would frustrate the implementation of the DCO.

**Trustees of the Burton Agnes Estate Trust [RR-074] (Plots 1211, 1223), the Hon Mrs S Cunliffe-Lister [RR-076](Plot 1203), W Clifford Watts Ltd [RR-085] (Plot 1203, 1211)**

7.5.27 I have dealt with the merits of the impact of the scheme on the sand and gravel operations and the sterilization of mineral deposits in Chapter 4 above and, also having regard to the right to compensation, I conclude that I have no reason to recommend withholding the grant of the CA powers described in the DCO on the basis of these objections.

**HUMAN RIGHTS ACT 1998**

7.5.28 The draft DCO engages Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. The rights and freedoms under this convention are given effect through the HRA1998. Article 1 provides a right to the protection of property, which can include the peaceful enjoyment of property or possessions or any effect of development on property values. Article 8 provides a right to respect for private and family life, which can include interference with home life through disturbance. These rights are however qualified and can be interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community.

7.5.29 In this case, the need to reduce emissions of CO<sub>2</sub> and develop CCS through the provision of the pipeline is a legitimate interest of the wider community. The compulsory acquisition powers sought by the draft DCO are an integral part of the overall scheme. I have already found that the proposal demonstrates a satisfactory balance between potential negative impacts and route length. The powers are no more than is required to secure the interests of the wider community and are not likely to place an excessive burden on those whose human rights could be affected. I therefore consider that there would be no violation of Articles 1 and 8.

7.5.30 The draft DCO also engages Article 6 of the Convention which relates to the equality of arms between the parties. There have not been any representations that have made any claims under this article in relation to compulsory acquisition. In any event, the application and its examination procedurally accord with the PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties. There would therefore be no violation of Article 6.

7.5.31 Finally, in terms of the overarching aims of the HRA1998, DCLG Guidance and the required balancing exercise, the pipeline development would accord with national policy. It is necessary to transport CO<sub>2</sub> away from emitters to the proposed storage facility, a legitimate public interest. Therefore, I am of the view that the case has been sufficiently made that the pipeline would be a proportionate solution, taking into account the balance between environmental

considerations and route length. The purposes for the compulsory acquisition powers sought are therefore legitimate, necessary and proportionate and sufficiently justify, and clearly outweigh, any interference with the human rights of those with an interest in the land affected.

- 7.5.32 Accordingly, I conclude that the proposal would not violate human rights in relation to the HRA1998 and the European Convention on Human Rights.

### **TEMPORARY POSSESSION**

- 7.5.33 Articles 28 and 29 of the DCO set out powers to take temporary possession of land to carry out the authorised development and to maintain it. The land which would be subject to these powers has been listed above in the DCO Schedule 9 and set out in the Book of Reference and Land Plans. In addition, temporary possession is possible for other Order land prior to compulsory acquisition. Justification for the use of temporary possession powers is set out in the Statement of Reasons.

- 7.5.34 As indicated above, these powers are not compulsory acquisition powers and accordingly the tests under sections 122 and 123 are not applicable. However, the use of the power must be justified in order to enable the proposed development to be implemented and maintained, the inevitable interference with human rights must be justified and there must be adequate compensation provisions in place for those whose land is affected.

- 7.5.35 Relevant representations have been received from many landowners and others with interests in the Order land. I have considered above those affected by the application for the permanent acquisition of land and the permanent acquisition of rights in land. It is highly likely that those same parties have interests in land where temporary possession and rights are sought and I have taken the objections into account in coming to my recommendation on the application for temporary possession and rights in the same way as for permanent acquisition.

- 7.5.36 The Human Rights Act considerations have been addressed above and I am satisfied that the temporary possession powers are needed both to facilitate implementation of the proposed development and to maintain it and that there are also adequate compensation provisions in place in the draft DCO.

## STATUTORY UNDERTAKERS

### *The Environment Agency*

- 7.5.37 Prior to the examination, the EA [RR-031<sup>92</sup>] submitted a relevant representation which sought amongst other things to protect its position as a statutory undertaker having interests which could be affected by the proposal. The EA submitted further written representations [REP1-012] aimed at safeguarding their position and, as I requested in my Rule 8 letter [PD-005], the applicant agreed Statements of Common Ground (SoCGs) with bodies, including the EA [REP1-076]. The SoCGs, including that with the EA, were updated during the examination, again at my request.
- 7.5.38 In addition to the response to the EA's representations [REP1-092<sup>93</sup>], the applicant and the EA agreed in the SoCG [REP1-076] with the approach of dis-applying certain Yorkshire Land Drainage Byelaws, as they apply to Main Rivers, which impose prohibitions that conflict with activities required for the carrying out of the authorised development. The applicant and the EA also agreed that, where applicable, National Grid would apply to the EA for consents/permits required for activities under s109 of the Water Resources Act 1991; Yorkshire Land Drainage Byelaws 1980; Environmental Permitting Regulations 2010, the Water Act 2003 and the Greenhouse Gas Emissions Trading Scheme Regulations 2005 separately from the DCO.
- 7.5.39 A final revised SoCG [REP3-030], following further submissions from the EA [REP2-011] showed that the only matter unresolved was the extent of biodiversity enhancements which were proposed by the applicant. That remained the case at the close of the examination [REP4-005].
- 7.5.40 However, in a final submission on 19 May, the closing date of the examination, the EA stated that it and the applicant had concluded an agreement to exercise an option for the necessary easement which the EA is satisfied would protect its land interests and make compulsory purchase of an interest in the land unnecessary. Whilst the form of legal documentation had been agreed with the applicant and with the tenant of the land in question, execution of the relevant documents had yet to take place, albeit likely in the next few days. Therefore, the EA was unable to withdraw those representations made previously regarding its land interest but hoped to be in a position to do so shortly after the close of the examination [CR-024].
- 7.5.41 Given those assurances, I have no reason to conclude that the negotiations would not be completed to the satisfaction of the EA and the applicant. This was confirmed by the applicant who intended to update the Secretary of State on or shortly after 1 July 2015 [CR-

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<sup>92</sup> Section 5

<sup>93</sup> No.32 5.0 Disapplication/Protective Provisions

018]. In any event, were agreement between the EA and the applicant not to be finally achieved, with the lack of objection in principle by the EA, the lack of any evidence to substantiate the objection to the compulsory acquisition and the positive direction of travel in negotiations, I am satisfied that the tests under s127 of PA2008 would be met.

### **Network Rail**

- 7.5.42 NR [RR-081] also submitted a relevant representation to protect its position as a statutory undertaker having interests which could be affected by the proposal. NR acknowledged that negotiations would have to continue with the applicant in order to agree outstanding matters.
- 7.5.43 NR [REP1-040] then submitted written representations again to protect their position as above with further updates on 27 January 2015 [EV-011] and 4 February 2015 [EV-017]. On 25 February 2015, after the DCO hearing and the Compulsory Acquisition Hearing(CAH), neither of which NR attended, NR submitted a further written representation [CR-011] updating negotiations with the applicant about protective provisions which indicated difficulties in agreeing with the applicant the presence of the provisions in the DCO. This position was confirmed by a further letter at Deadline 4 dated 5 March 2015 [REP4-003]. At Deadline 7, prompted by my Rule 17 request [PD-008] NR implied that negotiations with the applicant would be concluded satisfactorily prior to the close of the examination which would result in the withdrawal of its objection [REP7-010].
- 7.5.44 Finally, the day prior to the close of the examination, a joint position statement [CR-019] was received from the applicant and NR stating that they were engaged in negotiating a "Framework Agreement" and an "Option Agreement", both of which must be completed together. The outstanding points between the two parties are indicated in the position statement, but it seems to me that, other than the protective provisions, these matters<sup>94</sup> are for private agreement between the applicant and NR and are not for inclusion in the DCO.
- 7.5.45 The respective position in relation to the protective provisions of the applicant and Network Rail are set out in CR-019. Two alternative versions are submitted of a new Schedule 11 Part 3 "For the Protection of Railway Interests". They are identical with two exceptions<sup>95</sup>. The differences are explained and a track changed version for comparison purposes is also attached in CR019.

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<sup>94</sup> (a) Form of basic asset protection agreement; (b) Reversion to National Grid on transferee insolvency and (c) Easements.

<sup>95</sup> CR-019 Paragraph 16

7.5.46 The parties intend to complete negotiations by 1 July in which case, if the outcome is successful and agreement achieved, the Secretary of State may be satisfied that any protective provisions subsequently agreed between the applicant and NR should be included within the order. However should there still be a dispute between the applicant and NR, I consider that the safety and integrity of the operational railway is paramount and therefore, in that event, I would recommend that the Part 3 as suggested by NR should be included in the DCO. With the inclusion of these protective provisions I recommend that Secretary of State can be satisfied that the grant of compulsory acquisition powers over NR's land would not cause serious detriment and that the tests under s127 of the PA2008 would be met. I have included the protective provisions in the recommended DCO.

***Other parties***

7.5.47 Northern Powergrid (Yorkshire) Ltd consider that their plant and apparatus are protected by contractual provisions with the applicant and withdrew their objections [CR-017].

7.5.48 Drax Power Limited/Capture Power Limited have agreed a memorandum of understanding with the applicant and have withdrawn their objection [CR-012].

7.5.49 Neither BT Openreach nor Kingstone Communications made representations about the proposal and I have no reason to challenge the submissions by the applicant that those parties are satisfied with the standard protection provided to operators of electronic communications code networks by way of the Telecommunications Act 1984 in Part 2 of Schedule 11 (protective provisions) of the draft DCO [REP4-026][CR-018].

7.5.50 Yorkshire Water Services Limited [RR-015][REP-002] [CR-016] and the Government Piepline and Storage Systems [REP1-006] [CR-018<sup>96</sup>] each completed contractual documentation with the applicant in relation to the protection of plant and apparatus and withdrew their representations. Northern Gas Networks Limited [CR-015], National Grid Electricity Transmission PLC [CR-014] and National Grid Gas PLC [CR-013], none of whom had made representations, also satisfactorily completed contractual documentation with the applicant in relation to the protection of pant and apparatus.

7.5.51 Ineos Manufacturing (Hull) Limited [RR-069] [REP7-008], which owns the Teeside to Saltend Ethylene Pipeline is not a statutory undertaker to which s127 would apply, but was treated by the applicant as though it was. At the close of the examination, the company had not reached agreement with the applicant about the protection of its assets. However, the positive attitude displayed by the parties in the

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<sup>96</sup> Appendix 7

submitted joint statement [CR-018<sup>97</sup>] leads me to conclude that the negotiations should be completed successfully. A further statement is to be made by 1 July 2015. In the event that agreement is not achieved, given the national significance of the CCS pipeline, rigorous route selection process and the inevitability of the pipelines intersecting at some point, I consider that the right is required to facilitate the development and that there is a compelling case in the public interest for the land to be acquired compulsorily. Accordingly, the s122 tests for compulsory acquisition are met.

- 7.5.52 The Canal and River Trust (CRT) [RR-058] [REP1-017] is the Navigation Authority for the River Ouse noted that the pipeline would cross under the River Ouse to the north east of Drax power station. It seeks a minimum depth of the pipeline of 3.5m below the true clean bottom of the river to ensure that the integrity of the river bed is not compromised and navigation is not adversely affected. The applicant has agreed to this in the draft DCO. The applicant was also requested by the Trust to agree to its "Code of Practice for Works affecting the Canal & River Trust" but this negotiation was not completed by the close of the examination. The applicant is to provide an update to the Secretary of State after July 1st 2015 [CR-018]. Nevertheless, s127 is not engaged; the authorised development would pass under the CRT's land interests by at least 3.5m; and the DCO is seeking neither to compulsorily acquire any land or interest in land from CRT, nor to compulsorily acquire any right over CRT's land by the creation of a new right over its land or interest in land.
- 7.5.53 The Driffild Navigation Trust has not made representations about the scheme and nor is it clear whether they have title or rights on any affected land. Given failure of the Trust to negotiate with the applicant, I consider that the asset protection measures and unilateral undertaking suggested by the applicant should be treated as raising no objection from the Trust. The applicant is to provide an update to the Secretary of State after July 1st 2015.

### **S132 OF PA2008 - SPECIAL CATEGORY LAND**

- 7.5.54 There are four parcels of land which the applicant considers likely to be open space [AD-084<sup>98</sup>] [REP3-012<sup>99</sup>]. The four parcels are grouped into two areas: the Wansford Strip and the Beach Strip.
- 7.5.55 At Wansford, plot 1102 is grassland owned by the Yorkshire Wildlife Trust; plot 1106 is river frontage owned by Mr R Thirlby and Mrs A Farnsworth. The works proposed involve installing a section of the pipeline by trenchless methods under the land.

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<sup>97</sup> Appendix 5

<sup>98</sup> Paragraph 10.0.2

<sup>99</sup> Item 5. The acquisition of commons, open space etc. See the response of the applicant.

- 7.5.56 The draft DCO and Book of Reference provide for the compulsory acquisition of rights over Plots 1102 and 1106 referred to as "Permanent Type 2" i.e. the creation of the permanent new rights in relation to the land in a 24.4 metres wide strip of land within which the pipeline may be located. Therefore s132 is engaged on the Wansford Strip due to the application for surface rights, notwithstanding the applicability to the underground easements.
- 7.5.57 In my opinion, the requirements of s132(3) are met at Wansford. This is because the underground easements will leave the Wansford Strip no less advantageous to the public in the course of its recreation than these areas were before imposition of the easements: keeping and supporting the cross country pipeline underground would not affect the kinds of activities which could reasonably be described as public recreation such as dog-walking, picnicking, sports and children playing.
- 7.5.58 In addition, in relation to the above ground access and maintenance easements requirements of s132(3) are met because it can reasonably be said that these above-ground easements will leave the Wansford Strip no less advantageous than they were before imposition of these easements to the persons in whom they are vested and the public in the course of their recreation. As explained by the applicant, the construction activities undertaken would be by trenchless methods underground. It is not envisaged that cathodic protection test posts, aerial markers, field boundary markers, transformer rectifier kiosks or electricity cabinets would be installed at the Wansford Strip and, even if they were, they would be very minor features. Accordingly, I conclude that s132(3) is satisfied.
- 7.5.59 The Beach Strip is on the foreshore at Barmston. Plot 1277 is owned by the Glendon Estates; plots 1280 is Crown Land leased to East Riding of Yorkshire Council. The works proposed involve installing a section of the cross country pipeline by trenchless methods under the land to a tie-in point with the offshore pipeline; and a temporary construction compound and working area capable of supporting either tunnelling or horizontal directional drilling.
- 7.5.60 The draft DCO and Book of Reference provide for the compulsory acquisition of the same rights over Plots 1277 and 1280 as over Plots 1102 and 1106 i.e. "Permanent Type 2".
- 7.5.61 In the case of the above ground access and maintenance easements, the construction easements and the construction activities, the same considerations apply as for Wansford above and my conclusions are the same.
- 7.5.62 I have no reason to disagree with the applicant and there have been no objections on these matters. Therefore, in relation to all four plots of land at Wansford and Barmston, I am satisfied that the requirements of s132(3) are met and I do not consider that special parliamentary procedures need to be invoked.

## **SECTION 122 OF THE PA2008**

- 7.5.63 The applicant's case, and my consideration of the proposal in the light of national energy policy, is relevant under this section of the PA2008. The CCS Cross Country Pipeline is required to transport the CO<sub>2</sub> from emitters, initially the White Rose CCS generating station at Drax, to the storage area beneath the North Sea. From the work carried out on route options, the route selected would appear to satisfactorily balance potential negative impacts and route length. The applicant intends first and foremost to acquire land and rights in land through negotiation and agreement, although the DCLG Guidance recognises that for long linear schemes it may not always be practicable to acquire each plot of land by agreement. Therefore, I am satisfied that the preferred route appears to minimise the extent of compulsory acquisition to the extent that the land rights to be acquired are those which are properly required for the authorised development.
- 7.5.64 From the evidence provided with the application and during the examination, the applicant has attempted to engage comprehensively with those whose land or rights would be the subject of compulsory acquisition under the draft DCO. This process is still ongoing and whereas there are objections outstanding the majority of the affected persons appear sufficiently satisfied with the process of acquisition or private agreement not to submit objections. Therefore, I consider that the alternatives to compulsory acquisition have been fully explored.
- 7.5.65 The scale of the development proposed and its characteristics are set by the specific requirements of the pipeline in terms of the apparatus that needs to be used. There is therefore little scope for the consideration of alternatives in this regard. In view of all of the above points, I am satisfied that the applicant has adequately demonstrated that all reasonable alternatives to compulsory acquisition, including modifications to the route, have been explored in accordance with DCLG Guidance. The applicant has provided a sufficiently clear idea of the intended use of the land, and a satisfactory case for the inclusion of each parcel of land to be subject to compulsory acquisition powers has been made.
- 7.5.66 Articles 30 to 32 of the draft DCO contain provisions clarifying existing principles of compensation in relation to compulsory acquisition and temporary possession of land in connection with the authorised development. Any person suffering a loss due to the exercise of the foregoing rights and powers may be entitled to compensation pursuant to the compensation code (as applied and amended by the DCO). Any dispute in respect of the compensation payable is to be determined by the Lands Chamber of the Upper Tribunal.
- 7.5.67 In view of all of the above points, the applicant has demonstrated that the land to be taken would be no more than would be reasonably required in accordance with the Guidance. The applicant has made a satisfactory case that the land to be acquired under the draft DCO would be required for and to facilitate, or would be incidental to, the

authorised development. The proposal would therefore satisfy s122(2) of the PA2008.

- 7.5.68 The proposed CCS pipeline would accord with national policy in EN-1 in terms of the development and use of CCS technology to meet emission targets and enabling the UK to continue to use fossil fuels as part of its generating capacity. EN-1 recognises the need to develop a CCS pipeline as a demonstration project and that this may be designed to form part of a wider network with future emitters in mind.
- 7.5.69 The Yorkshire and Humber region provides an excellent opportunity for a demonstration project to form the basis for a regional network, capturing large volumes of carbon from a cluster of substantial emitters. There is a tradition of heavy industry in the area, which has led to the location of clusters of carbon dioxide emitters in the region.
- 7.5.70 The White Rose CCS Project has been identified as the initial emitter for the purposes of the demonstration project. The White Rose CCS Project (and together with it the Onshore Scheme) is a potential beneficiary of funding from DECC through its commercialisation competition.
- 7.5.71 There is therefore a clear need for this project to be delivered. In view of the considerable work that has been undertaken and is still in progress to obtain private agreements along the length of the pipeline route, I am satisfied that the project could not be delivered without compulsory acquisition powers on the areas where agreements have not been possible.
- 7.5.72 There is thus compelling evidence that the public benefit that would be derived from the compulsory acquisition for the authorised development would clearly outweigh the private loss that would be suffered by those whose land is to be the subject of compulsory acquisition.
- 7.5.73 The applicant has provided information as to its status within the energy industry and details of its parent company. This is in terms of the resource implications of both acquiring the land and implementing the proposal. From this, it has been demonstrated to my satisfaction, and in accordance with DCLG Guidance, that there is more than a reasonable prospect of funds being available for the proposal within the project timescales, without the need for external funding sources.
- 7.5.74 Accordingly, I conclude that there is a compelling case in the public interest for the relevant land and rights in land to be acquired compulsorily. The proposal would therefore satisfy s122(3) of the PA2008.

## **7.6 EXAMINING AUTHORITY'S RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION POWERS**

- 7.6.1 My recommendation arises from the examination process, including consideration of the application, all submissions and the proceedings of the compulsory acquisition hearing.
- 7.6.2 In view of my foregoing conclusions, I recommend that the compulsory acquisition powers included in the draft DCO in respect of the land detailed in the Book of Reference (Rev D) are approved if the Secretary of State is minded to grant development consent for this proposal.

## **8 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **8.0 INTRODUCTION**

- 8.0.1 The draft Development Consent Order (DCO) constitutes the consent sought for the proposed development. It sets out the authority to be given to the undertaker (including the permanent and temporary acquisition of land and interests in land), the commitments that the applicant must accept to facilitate the development, the further approvals that are required before particular works can commence, the protective provisions necessary to safeguard the interests of other parties and the requirements (corresponding to planning conditions) to be met when implementing the consent. The application draft DCO [AD-080] is accompanied by the required Explanatory Memorandum [AD-081] and both form an integral part of the application.
- 8.0.2 The draft DCO evolved during the examination and was amended iteratively in response to my questions and responses thereto, together with representations, submissions and hearing proceedings. It also developed in response to negotiations between the applicant and interested parties, who submitted representations to the examination, and affected persons, whose land would be affected. Consequently, there were six versions of the draft DCO that were considered during the examination and a seventh version that accompanies this report. Tracked changes were used on successive drafts to illustrate revisions and allow comparisons.
- 8.0.3 The application included the applicant's initial draft DCO (RevA) for the purposes of the examination [AD-080]. This, together with the associated Explanatory Memorandum [AD-081], Book of Reference [AD-084] and relevant responses to my written questions [PD-004] submitted at Deadline 1 were considered at the DCO specific hearing on 29 January 2015. I made requests for further information under Rule 17 in letters dated 18 March 2015 [PD-007] and 8 April 2015 [PD-008]. These considerations resulted in the submission of the applicant's successive drafts of the DCOs at the various deadlines, culminating in DCO (Rev G), the final version [REP-018].
- 8.0.4 The final version of the draft DCO was accompanied in its submission by a Revised Explanatory Memorandum [REP8-019] and a Commentary on Revision G of the Final Draft DCO [REP8-020].

### **8.1 THE DCO**

- 8.1.1 The recommended Order is comprised of the Articles, including the principal powers (Articles 4 to 7), the Powers of Acquisition (Articles 23 to 27) and Temporary possession of land (Articles 28 and 29). Schedule 1 sets out what would be the authorised development. Schedule 2 lists the Works Plans (Part 1), the Land Plans (Part 2), the Access, Rights of Way and Temporary Stopping Up Plans (Part 3), the

Approved Plans (Part 4), the Hedgerow Plans (Part 5) the Parameters (Part 6) and the Planting Drawings (Part 7).

- 8.1.2 Schedule 3 sets out the Requirements. Schedule 4 sets out the streets which would be subject to street works. Schedule 5 lists the streets which would be subject to temporary and permanent alteration of layout and Schedule 6 list the streets and PRow to be temporarily stopped up. Schedule 7 lists the temporary and permanent accesses to the works.
- 8.1.3 Schedule 9 contains the lists of land of which temporary possession may be taken. Schedule 10 describes the Deemed Marine Licence (DML) under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009. Schedule 11 lists the protective provisions for various undertakers.
- 8.1.4 A full explanation of the application DCO is to be found in the Explanatory Memorandum [AD-081] submitted by the applicant with the application.

#### **ALTERATIONS TO THE APPLICANT'S DCO**

- 8.1.5 The applicant numbered its versions of the DCO A to G through the examination. All of these were provided to the ExA and can be found in the examination library appended. The evolution of the DCO from its initial submission by the applicant at application stage to the final version was accompanied at each stage by a commentary on the particular revision. There is also a comparison of the application draft of the DCO Rev A with the final draft DCO Rev G [CR-025] together with the accompanying Explanatory Memorandum [CR-026].
- 8.1.6 Most of the changes made by the applicant were to address matters raised by interested parties such as to better secure mitigation outlined in the ES but not originally secured by the application version of the DCO.
- 8.1.7 The greatest number of changes to the DCO took place at the first revision, DCO (Rev B), which followed from my first written questions, together with the relevant representations and dialogue with interested parties [REP2-017]. There were refinements to some Articles and Schedules and most of the Requirements, the most significant changes being the subdivision of the definition of "commence" into Type 1, Type 2 and Type 3 in Requirement 1 Interpretation and the redefinition of "maintain" in Article 2 (*interpretation*). DCO Rev (C) included the removal of the 6.5m wind turbines from Schedule 1 AGIs and changes to Schedule 10 (DML) in representations from the MMO [REP3-025].
- 8.1.8 DCO (Rev D) included the alteration of the works proposed for the pipeline crossing beneath the River Ouse so that a minimum clearance of 3.5m would be achieved [REP4-035]. In addition, Requirement 3(1) was also altered to provide scope for the later approval by the local planning authority of minor changes to the detail of what is shown on

the approved plans, subject to the necessary safeguards to ensure that what is built does not go beyond what has been assessed. The approved details would either be the approved plans listed in Part 4 (approved plans) of Schedule 2 (plans), or revised versions of those plans.

- 8.1.9 Requirement 15 was amended to implement the result of my questions and discussions between the applicant and Selby DC about noise levels at Temporary Construction Areas (TCAs) and with EYRC about low frequency noise levels and noise from Barmston Pumping Station. Requirement 26 was added to provide for giving notice of venting at the AGIs during maintenance.
- 8.1.10 The DCO (Rev E) [REP5-013] (Rev F) [REP6-013] and (Rev G) [REP8-020] made minor refinements and clarifications of plans including the description of cathodic protection in the lists of Works at the AGIs.

## **8.2 ARTICLES**

- 8.2.1 As with every statutory instrument, the DCO is introduced by a preamble which, amongst other things, recites the powers under which the instrument would be made.
- 8.2.2 In the Contents section of the DCO, in order to be accurate, the sentence immediately prior to the heading PART 1 Preliminary should read "*The Secretary of State, having the function of deciding the application (e), in exercise of the powers conferred by sections 103, 114, 115, 120, 122 and 132 of that Act, makes the following Order, the change being the addition of section 132.* This is a reflection of the tests of Section 132 being met considering special category land at Wansford and Barmston (see Section 7.5 above).

### **ARTICLE 2**

- 8.2.3 In my opinion, the definition of "environmental statement" is long winded and introduces unnecessary uncertainty by the use of the phrase "*... together with any supplemental or additional environmental information ...*". Therefore I recommend the deletion of that phrase and those that follow. The definition would then be: "*environmental statement means documents(s) certified as the environmental statement by the Secretary of State for the purposes of this Order;*". This is a definition similar to that used in the Hornsea One offshore wind farm decision and the Willington C Gas Pipeline decision.
- 8.2.4 Articles 4 to 7 of the DCO contain provisions for the principal powers needed for the authorised development. Articles 8 and 9 contain provisions relating to the transfer and benefit of the DCO.

## **ARTICLE 5**

### **Maintenance of authorised development**

- 8.2.5 Article 2 states that ""maintain" includes inspect, examine, monitor, test, repair, set up, configure, clear, dismantle and/or reconstruct the authorised development and/or replace part or a section of the authorised development with a part or section which materially serves the same purpose; and "maintained", "maintaining" and "maintenance" must be construed accordingly;".
- 8.2.6 In my view, this is a very wide power which permits the complete removal and reconstruction of the project which could enable works to be undertaken that have not been assessed in the ES. The article limits it to works which do not materially vary from the description of works in Schedule 1 but I consider this could still permit works that have not been assessed. Therefore I recommend that Article 5 (a) is modified to include *"and only to the extent assessed in the environmental statement."*

## **ARTICLE 9**

### **Transfer of benefit of Order**

- 8.2.7 The Marine Management Organisation (MMO) claimed that due to being the post consent enforcement body for the deemed marine licence (DML), the potential transfer of any or all of the benefit of the DCO must not affect the MMO's ability to discharge its duties under the Marine and Coastal Access Act 2009. I consider that the request for the inclusion of the clause as suggested and, as indicated by the MMO, as agreed without prejudice by the applicant, would be reasonable and would enable the MMO to protect its interests in the event of the transfer of the benefit of the DCO. In support of its submissions, the MMO referred to the Secretary of State having included a similar provision at Hornsea One and Dogger Bank Creyke Beck offshore wind farms [REP4-004][REP5-002].
- 8.2.8 It is recommended that to Article 9 should be added:
- "(2b) Where an application for consent pursuant to paragraph (1) includes a request for consent for the whole or part of the benefit of Schedule 10 (deemed marine licence under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009) of this Order to be transferred or granted to another person, the Secretary of State must determine that request in consultation with the MMO and, in so doing, must notify the MMO of an application which includes such a request and have regard to any representations from the MMO made no later than 28 days after the date of that notification."

## **ARTICLE 55**

### **Crown Rights**

- 8.2.9 Article 55 was inserted into the DCO at the request of The Crown Estate (TCE) which is the standard article which TCE seeks in draft DCOs for the protection of Crown Rights. As a consequence, Articles 23(4) and (6) and 24 (6) were deleted from the draft [REP5-01].

## **8.3 SCHEDULES**

- 8.3.1 Schedules 1 to 14 of the DCO contain information referred to in the articles of the Order.

### **SCHEDULE 3**

#### **Requirement 1**

- 8.3.2 In response to written question 12.32 querying whether the definition of commencement in the DCO as applied for would allow a range of site works to take place before details of measures to protect the environment had been approved, the applicant has proposed three separate definitions of commencement: type 1, type 2 and type 3 [REP1-086]. This would reflect the various scenarios in which pre-commencement works might occur and to avoid works with significant environmental effects taking place prior to each Requirement being discharged [REP8-019]. I am satisfied that the pre-commencement works which would be permitted by this procedure would be unlikely to result in significant environmental effects without mitigation being in place.
- 8.3.3 The definition of "relevant planning authority" is given in Article 2. In my view, it is unnecessary to repeat it here and I recommend its deletion.

#### **Requirement 8 (6)**

- 8.3.4 In order to be consistent within the requirement "pipeline" should be deleted from the sentence and that is what I recommend.

#### **Requirement 14**

- 8.3.5 Requirement 14 deals with the Code of Construction Practice (CoCP) which follows Requirement 18 of the DCO Model Provisions and requires that the authorised development must be carried out in accordance with the code of construction practice, unless otherwise approved in writing by the relevant planning authority<sup>100</sup>. Requirement 21 limits any amendments to those which would not give rise to any materially new or materially different significant environmental effects

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<sup>100</sup> See also Requirement 20: Requirement for written approval

from those assessed in the environmental statement and is an approach I support and find acceptable.

### **Requirement 15**

- 8.3.6 The noise thresholds in this requirement reflect my conclusions as described above in Chapter 4 and those agreed by the applicant in discussions with interested parties.

## **SCHEDULE 10**

### **Article 1**

#### ***Interpretations***

- 8.3.7 The definition of "*environmental statement*" is similar to that in Article 2 with, in my opinion, the same defects. Therefore, for the same reasons, I recommend the definition becomes: "*environmental statement means documents(s) certified as the environmental statement by the Secretary of State for the purposes of this Order;*"

## **PART 2 LICENCE CONDITIONS**

### **Condition 12**

#### ***Amendments to approved details***

- 8.3.8 Any amendments to approved details should be subject to the same considerations as the Requirements of the DCO. Requirement 21 limits any amendments to those which would not give rise to any materially new or materially different significant environmental effects from those assessed in the environmental statement. To be consistent and accurate the same should apply to the DML. Therefore, the phrase "*to the extent the MMO may lawfully do so*" should be deleted and in its place, following Requirement 21 should be inserted: "*that approval or agreement may not be given unless it has been demonstrated to the satisfaction of the MMO that the subject-matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different significant environmental effects from those assessed in the environmental statement*".

## **SCHEDULE 11**

### **Protective Provisions**

- 8.3.9 In accordance with my conclusions in the Compulsory Acquisition Chapter the protective provisions for Network Rail should be added as a new Part 2 with the existing Part 2 relabelled Part 3 and reflected in the Contents list at the beginning of the DCO. The new provisions are attached as Appendix A.

## **OTHER MATTERS**

- 8.3.10 I have considered all other representations received. I have also taken into account all other important and relevant matters in my consideration of the application.

## **8.4 CONCLUSIONS ON DEVELOPMENT CONSENT**

- 8.4.1 I conclude that for the reasons set out in the chapters above and subject to the incorporation of the DCO changes I recommend, that development consent should be granted for the development as set out in my recommendation in Chapter 9 and as shown in Appendix A.

## **9 OVERALL CONCLUSIONS AND RECOMMENDATION**

- 9.0.1 In coming to my overall conclusion I have had regard to the relevant National Policy Statements, local impact reports submitted during the examination, any prescribed matters and all matters that I consider are both important and relevant to this application. The legal and policy context that I consider applies to this application is set out in Chapter 3. My findings in relation to policy and factual issues are in Chapter 4. My overall conclusion on the case for development consent and my recommendation that development consent is granted is set out in Chapter 6.
- 9.0.2 I have also considered the request for compulsory acquisition powers in Chapter 7 and concluded that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the applicant.
- 9.0.3 In Chapter 6, I concluded and recommended that, if development consent is granted as recommended, the Order should be made in the form set out in Appendix A.
- 9.0.4 In coming to my view that development consent should be granted in the form proposed in Appendix A, I have taken into account all matters raised in the representations and consider that there is no reason either individually or collectively that would lead me to a different conclusion.
- 9.0.5 Other consents are required and some may be required to implement the scheme but, from the submitted statements of common ground, there is every reason to suppose that they would be granted if required. None of the consents identified in Section 1 would be a prerequisite of making the Development Consent Order.
- 9.0.6 I therefore recommend that the Secretary of State, for the reasons set out in the above report, makes the Yorkshire and Humber (Carbon Capture and Storage Cross Country Pipeline) Order as set out in Appendix A.