



Department for  
Business, Energy  
& Industrial Strategy

Department for Business,  
Energy & Industrial Strategy

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**Our Ref:** EN010091

4 October 2019

Dear Mr Doyle

**PLANNING ACT 2008**

**APPLICATION FOR THE DRAX POWER (GENERATING STATIONS) ORDER**

**1. Introduction**

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 4 July 2019 of the Examining Authority ("the ExA"), a Panel comprising Richard Allen (Lead Member) and Menaka Sahai (Panel Member), which conducted an Examination into the application submitted on 29 May 2018 ("the Application") by Drax Power Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Drax Power Station Re-Powering Project ("the Development").

1.2 The Application was accepted for Examination on 26 June 2018. The Examination began on 4 October 2018 and was completed on 4 April 2019. A number of changes were made to the Application during the Examination which did not materially or significantly alter the application proposals. The details of these changes were made available to interested parties and examined by the ExA.

1.3 The Order, as applied for, would grant development consent for the construction and operation of two gas-fired generating units (“Unit X” and “Unit Y” as designated by the Applicant) each with an electrical generating capacity of up to 1,800MW and two battery storage generating units situated within and adjacent to the boundary of the existing Drax Power Station near Selby in North Yorkshire. The Order would also provide for related and necessary infrastructure. The Development would comprise:

- Work No 1 – an electricity generating station (Unit X) fuelled by natural gas and with a gross electrical output capacity of up to 1,800MW including up to two gas turbines, one turbine hall, a new main pipe rack, modifications to the existing steam turbine, generating plant and turbine hall building, a new underground gas pipeline, and associated works (ground preparation, lighting, roadways and car parking, drainage and waste management, and landscaping);
- Work No 2 – an electricity generating station (Unit Y) fuelled by natural gas and with a gross electrical output capacity of up to 1,800MW including up to two gas turbines, one turbine hall, a new main pipe rack, modifications to the existing steam turbine, generating plant and turbine hall building, a new underground gas pipeline, and associated works (ground preparation, lighting, roadways and car parking, drainage and waste management, and landscaping);
- Work No 3 – up to two battery storage facilities including a structure protecting the battery energy storage cells;
- Work No 4 – new Gas Insulated Switchgear (“GIS”) banking buildings;
- Work No 5 – a Gas Receiving Facility compound;
- Work No 6 – an Above Ground Installation including creation of a permanent access from Rusholme Lane, creation of a permanent access into the field to the south of Dickon Field Drain, and creation of a culvert on Dickon Field Drain;
- Work No 7 – an underground gas pipeline connection, approximately 3km in length and up to 600 millimetres (mm) nominal diameter, together with telemetry cabling;
- Work No 8 – underground electrical connections (up to 400 kilovolt (kV)) between the new GIS banking buildings and the existing National Grid substation busbars;
- Work No 9 – temporary construction laydown areas including two means of access, and car parking;
- Work No 10 – Carbon Capture and Storage (“CCS”) readiness reserve space and diversions for public rights of way;

- Work No 11 – retained and enhanced landscaping and biodiversity enhancement measures;
- Work No 12 – decommissioning and demolition of sludge lagoons and construction of replacement sludge lagoons, bund walls, underground pipework, valves and sluices and access roads;
- Work No 13 – removal of an existing 132kV overhead line and removal of two 132kV pylons and foundations;
- Work No 14 – construction of a temporary passing place on Rusholme Lane; and
- Associated development in connection with and in addition to work nos. 1–14 but only within the Order Limits and insofar as it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

1.4 In addition, the Applicant sought the compulsory acquisition of land, rights over land and the temporary possession of land in order to ensure the Development could proceed to construction and operation.

1.5 Published alongside this letter on the Planning Inspectorate’s website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 3 - 10 of the ExA’s Report, and the ExA’s summary of conclusions and recommendation is at Chapter 11.

## **2. Summary of the ExA’s Report and Recommendation**

2.1 The ExA assessed and tested a range of issues during the Examination, which are set out in the ExA’s Report under the following broad headings:

- Legal and Policy context, including consideration of the relevant National Policy Statements, European, National and Local Law and policy (Chapter 3);
- Planning issues arising from the Application and during Examination (Chapter 4) which includes consideration of the Principle of the Proposed Development and Conformity with National Policy Statements; Climate Change Impacts; Carbon Capture Storage Readiness; Combined Heat and Power Readiness; Traffic and Transport; Air Quality; Noise and Vibration; Historic Environment; Biodiversity; Landscape and Visual Amenity; Flooding and Water; Waste Management; Ground Conditions and Contamination; Socio-Economics; Major Accidents and Disaster Prevention; Statutory Nuisance and Human Health; Consideration of Alternatives; and Cumulative and Combined Effects;
- Findings and Conclusions in relation to the Habitats Regulations Assessment (Chapter 6);

- Conclusions on the case for Development Consent (Chapter 7);
- Alternative Recommended DCO for Consenting Unit X Only (Chapter 8);
- Compulsory Acquisition and Related Matters (Chapter 9), and
- Draft Development Consent Order and Related Matters (Chapter 10).

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 11) of the ExA's Report, the ExA recommended that consent for the Development should be withheld.

### **3. Summary of the Secretary of State's Decision**

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

### **4. Secretary of State's Consideration of the Application**

4.1 The Secretary of State has considered the ExA's Report and all other material considerations. The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report (in the form "[ER X.X.X]").

4.2 The Secretary of State has had regard to the Local Impact Report ("LIR") submitted jointly by North Yorkshire County Council and Selby District Council [ER 3.10] as the relevant local authorities for the area of the proposed Development and the Development Plan for the area of the proposed Development [ER 3.11] which cites a number of relevant North Yorkshire County Council and Selby District Council policies. The Secretary of State has also had regard to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes 323 relevant representations were made by statutory authorities, non-statutory authorities and members of the public. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has considered the findings, conclusions and recommendations of the ExA as set out in the ExA's Report in reaching her own conclusion on the Application. The reasons for the Secretary of State's decision are set out in the following paragraphs.

## **Secretary of State's consideration of the ExA's findings and conclusions in relation to the planning issues**

### **The Principle of the Proposed Development and Conformity with National Policy Statements**

4.4 The Secretary of State notes that this subject formed the overriding principal issue in the Examination [ER 5.2.1]. The ExA's view was that there were two key relevant issues. Firstly, whether the need for the Development was a matter before the Secretary of State and secondly, if so, the individual contribution that the Development would make to meeting identified need [ER 5.2.4]. The ExA concluded that EN-1 draws a distinction between the need for energy nationally significant infrastructure projects ("NSIPs") in general and the need for any particular development and that the former did not axiomatically support the latter [ER 5.2.21]. The ExA therefore determined that it was necessary to examine the individual contribution of the Development towards meeting need against the three overarching policy objectives underpinning the Overarching National Policy Statement for Energy (EN-1), namely security of energy supply, energy affordability and decarbonisation [ER 5.2.25], and that, in doing so, it was appropriate to take into account evidence of changes in energy generation since the publication of EN-1 in 2011 [ER 5.2.23].

4.5 The ExA's report goes on to conclude that it has not been demonstrated by the Applicant that the Development meets an identified need for gas generation capacity when assessed against these high-level objectives. The ExA's conclusion is based mainly on an assessment that the greenhouse gas emissions ("GHGs") from the operational facility would increase substantially when compared with a baseline scenario in which the existing plant was not re-powered (see paragraphs 4.21 – 4.28 below). The ExA found that, in view of this substantial increase in GHGs, the Development would conflict with the decarbonisation objective in the NPS whilst making a neutral contribution to security of supply and affordability in view of the evidence it considered regarding changes in energy generation since the publication of EN-1.

4.6 The Secretary of State has carefully considered the findings on these matters set out within the ExA's Report [ER 5.2.1-74]. She notes that section 104(3) of the 2008 Act sets out that decisions on NSIPs where a national policy statement has effect must be taken in accordance with the relevant national policy statement except where she is satisfied that doing so would lead to a breach of the UK's international obligations (section 104(4)), lead to the Secretary of State being in breach of any duty imposed on her by or under any enactment (section 104(5)), be unlawful by virtue of any enactment (section 104(6)), or where she is satisfied that the adverse effects of a development outweighs its benefits (the last at section 104(7) of the Act).

4.7 She also notes that the ExA's findings on these matters led it to conclude that the Development would not be in accordance with the relevant National Policy Statements for the purposes of section 104(3) of the 2008 Act [ER 7.3.6] and would undermine the Government's commitment to cut GHG emissions as set out in the Climate Change Act 2008 ("the CCA"). Furthermore, when considering the planning balance for the purposes of section 104(7) of the 2008 Act, the ExA gave no positive weight to the contribution of the Development towards meeting identified need and

gave considerable negative weight in the planning balance to both the adverse effects of the Development's GHG emissions on climate change (see paragraphs 4.21 – 4.28 below) and the perceived conflict with the NPSs' overarching decarbonisation objective.

4.8 The Planning Act 2008 together with the National Policy Statements set out a process for decision-makers to follow in considering applications for NSIPs. In the first instance, the decision-maker needs to consider whether the proposed NSIP is in accordance with the relevant NPS(s).

4.9 The Secretary of State takes the view that the relevant National Policy Statements are clear in setting out the policies which apply for this purpose. Paragraph 3.1.1 of EN-1 states that: *"[T]he UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions"*. Further, paragraph 3.1.3 sets out that: *"[T]he IPC [the decision-taker] should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this part."*

4.10 Paragraph 3.6.1 of EN-1 states: *".....Fossil fuel power stations play a vital role in providing reliable electricity supplies.....They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy....."*. In addition, paragraph 3.6.8 concludes...*"....it is clear that there must be some fossil fuel generating capacity to provide back-up for when generation from intermittent renewable generating capacity is low and to help with the transition to low carbon electricity generation. It is important that such fossil fuel generating capacity should become low carbon, through development of CCS, in line with carbon reduction targets. Therefore, there is a need for [carbon capture ready] fossil fuel generating stations....."*

4.11 Finally, paragraph 4.1.2 of EN-1 states that, *"Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in part 3 of the NPS.....the [decision-maker] should start with a presumption in favour of granting consent to applications for Energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused."*

4.12 In light of the provisions set out above, the Secretary of State considers that the proposed Development – a gas-fired generating station which would be carbon capture ready (with directly linked battery storage) – is a type of infrastructure that is covered by EN-1 and by the National Policy Statement for Fossil Fuel Electricity Generation Infrastructure (EN-2) and as such the presumption in favour of granting consent that is set out in paragraph 4.1.2 of EN-1 should apply.

4.13 The Secretary of State has considered the assessment that the ExA has undertaken to determine whether the Development would meet an identified need for gas generation capacity by reference to the high-level objectives of security of supply, affordability and decarbonisation. However, the Secretary of State is of the view that

the NPSs clearly set out the specific planning policies which the Government believes both respect the principles of sustainable development and are capable of facilitating, for the foreseeable future, the consenting of energy infrastructure on the scale and of the kinds necessary to help us maintain, safe, secure, affordable and increasingly low carbon supplies of energy. The Secretary of State's view is that these policies, including the presumption in favour of granting consent for energy NSIPs in EN-1 have already taken account of the need to achieve security of supply, affordability and decarbonisation at a strategic level. The NPSs do not, therefore, require decision makers to go beyond the specific and relevant policies they contain to assess individual applications against those high level objectives and there was no need, therefore, for the ExA to make a judgement on those issues when assessing whether this specific application was in accordance with the NPS. The ExA's views on these matters do not, therefore, remove the need to apply the general presumption in favour of Carbon Capture Ready ("CCR") fossil fuel generation which already assumes a positive contribution from such infrastructure.

4.14 Despite concluding that the presumption in favour of fossil fuel generation applies to the proposed Development, the Secretary of State must still consider whether any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. As indicated above, the ExA identified that there would be significant adverse effects from the Development in respect of GHG emissions which gave rise to a perceived conflict with the decarbonisation objective of EN-1. The Secretary of State has considered the ExA's arguments on GHG emissions.

4.15 However, in line with paragraph 4.13 above, the Development's impacts on decarbonisation must, in the first instance, be assessed by reference to the specific policies on carbon emissions from energy NSIPs which are contained in the relevant NPSs and which reflect the appropriate role of the planning system in delivering wider climate change objectives and meeting the emissions reduction targets contained in the CCA. In this regard, the Secretary of State has noted that section 2.2 of EN-1 explains how climate change and the UK's GHG emissions reduction targets contained in the CCA have been taken into account in preparing the suite of Energy NPSs. She has also noted the policy contained in paragraph 5.2.2 of EN-1 which sets out (underlining added):

*"CO2 emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided (even with full deployment of CCS technology). However, given the characteristics of these and other technologies, as noted in Part 3 of this NPS, and the range of non-planning policies aimed at decarbonising electricity generation such as EU ETS (see Section 2.2 above), Government has determined that CO2 emissions are not reasons to prohibit the consenting of projects which use these technologies or to impose more restrictions on them in the planning policy framework than are set out in the energy NPSs (e.g. the CCR and, for coal, CCS requirements). Any ES [Environmental Statement] on air emissions will include an assessment of CO2 emissions, but the policies set out in Section 2, including the EU ETS, apply to these emissions. The [decision-maker] does not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets and this section does not address CO2 emissions or any Emissions Performance Standard that may apply to plant."*

4.16 This policy is also reflected in paragraph 2.5.2 of EN-2. It is the Secretary of State's view, therefore, that, while the significant adverse impact of the proposed Development on the amount of greenhouse gases that will be emitted to atmosphere is acknowledged, the policy set out in the relevant NPSs makes clear that this is not a matter that that should displace the presumption in favour of granting consent.

4.17 In light of this, the Secretary of State considers that the Development's adverse carbon impacts do not lead to the conclusion that the Development is not in accordance with the relevant NPSs or that they would be inconsistent with the CCA. The Secretary of State notes the need to consider these impacts within the overall planning balance to determine whether the exception test set out in section 104(7) of the 2008 Act applies in this case. The ExA considers that the Development will have significant adverse impacts in terms of GHG emissions which the Secretary of State accepts may weigh against it in the balance. However, the Secretary of State does not consider that the ExA was correct to find that these impacts, and the perceived conflict with NPS policy which they were found to give rise to, should carry determinative weight in the overall planning balance once the benefits of the project are properly considered, including in particular its contribution towards meeting need as explained below.

4.18 The ExA's views on the need for the Development and how this is considered in the planning balance have also been scrutinised by the Secretary of State. As set out above, paragraphs 3.1.3 of EN-1, and the presumption in favour of the Development already assume a general need for CCR fossil fuel generation. Furthermore, paragraph 3.1.4 of EN-1 states: *"the [decision maker] should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent"*. The ExA recommends that no weight should be given to the Development's contribution towards meeting this need within the overall planning balance. This is predicated on its view that EN-1 draws a distinction between the need for energy NSIPs in general and the need for any particular proposed development. The Secretary of State disagrees with this approach. The Secretary of State considers that applications for development consent for energy NSIPs for which a need has been identified by the NPS should be assessed on the basis that they will contribute towards meeting that need and that this contribution should be given significant weight.

4.19 The Secretary of State notes that paragraph 3.2.3 of EN-1 states that *"the weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure"*. The Secretary of State has, therefore, considered whether, in light of the ExA's findings, there is any reason why she should not attribute substantial weight to the Development's contribution to meeting the identified need for new CCR fossil fuel generation infrastructure in this case. In particular, she has considered the ExA's views on the changes in energy generation since the EN-1 was published in 2011, and the implications of current models and projections of future demand for gas-fired electricity generation and the evidence regarding the pipeline of consented gas-fired infrastructure which the ExA considered to be relevant [ER 5.2.40-43].



4.20 The Secretary of State's consideration of the ExA's position is that (i) whilst a number of other schemes may have planning consent, there is no guarantee that these will reach completion; (ii) paragraph 3.3.18 of EN-1 sets out that the Updated Energy and Emissions Projections (on which the ExA partially relies on to reach its conclusions on current levels of need) do not *"reflect a desired or preferred outcome for the Government in relation to the need for additional generating or the types of electricity required"*; and (iii) paragraph 3.1.2 of EN-1 explains that *"[i]t is for industry to propose new energy infrastructure projects within the strategic framework set by Government. The Government does not consider it appropriate for planning policy to set target for or limits on different technologies"*. These points are reinforced elsewhere in EN-1, for example in paragraphs 2.2.4 and 2.2.19, which explain that the planning system will complement other commercial and market based mechanisms and rules, incentives and signals set by Government to deliver the types of infrastructure that are needed in the places where it is acceptable in planning terms – decisions on which consented energy schemes to build will therefore also be driven by these factors. In light of this, the Secretary of State does not accept that the ExA's findings on these issues should diminish the weight to be attributed to the Development's contribution towards meeting the identified need for CCR gas fired generation within the overall planning balance. The Secretary of State considers that this matter should be given substantial weight in accordance with paragraph 3.1.4 of EN-1. The Secretary of State's overall conclusions on the planning balance are set out at paragraphs 6.1 – 6.14 below.

### **Climate Change Impacts**

4.21 The ExA's Report notes that EN-1 references the reduction in carbon emissions set out in the Climate Change Act 2008 where a target of an at least 80% reduction in greenhouse gas emissions by 2050 is set out. The Report also notes the aims of the Paris Agreement signed in 2016 which seeks to limit the rise in global temperature to less than 2°C above pre-industrial levels.

4.22 The Application sets out the level of greenhouse gas emissions from the existing coal-fired units 5 and 6 at the Drax Power Station while noting the Government's intention to phase out unabated coal-fired electricity generation by 2025 and limit emissions to 450g CO<sub>2</sub>/kWh. The ExA notes that this level is much lower than the level of the current coal-fire units which is 840g CO<sub>2</sub>/kWh.

4.23 There was considerable discussion during the Examination about what constituted a baseline for measuring changes in GHG emissions resulting from the Development with the Applicant and other parties each submitting different scenarios. The Applicant considered that the baseline would follow one of two scenarios post-2025:

- the coal-fired generation at Units 5 and 6 would continue at the proposed limit of 450g CO<sub>2</sub>/kWh; or
- if Units 5 and 6 stopped generation and were decommissioned, their output would be replaced by other generation operating at similar emission levels.

4.24 The Applicant also sets out that once Units 5 and 6 have been replaced by the proposed Development, the new Units would generate at an emissions level of 380g CO<sub>2</sub>/kWh which would mean a reduction of 55% in the emissions intensity from previous levels. After 2025, when any coal-fired generation would need to meet the 450g CO<sub>2</sub>/kWh limit, the reduction in emissions intensity would be 16% lower.

4.25 As far as the net effect is concerned, the Applicant sets out that from 2020 to 2050 over the life of the Development, there would be a 90% increase in GHG emissions when measured against the baseline scenario but this would be set against a 173% rise in generating capacity as measured against the generating capacity of the existing coal-fired units.

4.26 The ExA noted that there were wide divergences of view on how the baseline should be assessed and tested these during the Examination. ClientEarth, BiofuelWatch and an individual questioned whether the coal-fired units at Drax could continue operating after 2025 because they would not be able to meet the Government's proposed emissions limit of 450g CO<sub>2</sub>/kWh. In response, the Applicant stated that there were a number of ways in which the 450g CO<sub>2</sub>/kWh limit could be met economically after 2025 (including the use of biomass co-firing and carbon capture and storage technology).

4.27 As far as assumptions about the emissions intensity of any generating capacity are concerned, in its overall conclusion, the ExA found that the total increase in GHG emissions of more than 90% against the baseline figure would represent a significant adverse impact and thus weighed against the Development being granted consent. The ExA concludes, therefore, that the Development would conflict with the decarbonisation objective of the NPSs for Energy and would undermine the Government's commitment to reduce GHG emissions as set out in the Climate Change Act 2008. The Secretary of State does not agree with this conclusion for the reasons set out at paragraphs 4.14 - 4.17 above. The effect of this matter within the overall planning balance is considered further at paragraphs 6.6 – 6.7 below,

4.28 The Secretary of State notes that the ExA also concluded that there was no evidence that granting consent for the Development would itself lead the Secretary of State to be in breach of her statutory duties under the CCA or any other enactment [ER 7.3.8]. The Secretary of State agrees with the ExA's conclusion in this matter. The implications of the recent amendment to the CCA are considered further at paragraphs 5.6 – 5.9 below.

### **Carbon Capture Readiness**

4.29 The Secretary of State notes that, as set out in NPSs EN-1 and EN-2, all commercial scale fossil fuel generating stations with a gross generating capacity of 300MW or more have to be 'Carbon Capture Ready' ("CCR"). Applicants are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009<sup>1</sup> or any successor to it. In the case of the

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<sup>1</sup> Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43609/Carbon\\_capture\\_readiness\\_-\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf)

Development, the proposed fossil-fuelled generating capacity is up to a maximum of 3,600MW and so falls under the provisions of relevant legislation and the guidance.

4.30 In order to ensure carbon capture readiness, BEIS guidance sets out a number of tests which must be met to indicate that readiness:

- that sufficient space is available in which to site any carbon capture infrastructure which might be necessary at some future point;
- that retro-fitting carbon capture equipment to an existing plant is technically feasible;
- that a geological storage site would be available for the CO<sub>2</sub> produced;
- that the transportation of any produced CO<sub>2</sub> is technically feasible; and
- that the economic feasibility of the retro-fitting, transport and storage of the CO<sub>2</sub> within the lifetime of the plant in question has been demonstrated.

4.31 The Applicant submitted a 'Carbon Capture Readiness Statement' with the Application which was revised as it progressed through Examination in light of comments from the ExA and other parties (principally, the Environment Agency). The Statement considered the carbon capture provisions in the Application against the tests set out in EN-1.

4.32 The ExA considered these matters during the Examination (including taking into account the views of the Environment Agency) and concluded that the proposed Development accords with all legislation and policy requirements. The Secretary of State agrees with the ExA's conclusion in this matter.

4.33 Another issue in relation to carbon capture provision (raised by ClientEarth during the Examination of the Application) was whether any Order that might be made for the Development should contain a requirement requiring the Applicant to incorporate carbon capture and storage mechanisms into the project infrastructure to be used during its operation so that the climate change impacts of the project could be mitigated.

4.34 In response, the Applicant stated that carbon capture storage infrastructure was not part of the Application and, in any case, the relevant technology was so far untested and the cost of fitting it had not been modelled. The Applicant also stated that the UK Government did not intend to roll out carbon capture and storage until the 2030s once appropriate testing had been undertaken. Finally, the Applicant stated that the Development was fully in accordance with the relevant legislation and guidance in being carbon capture ready.

4.35 Despite the Applicant's arguments, the ExA did consider whether it was possible for the Secretary of State to include a condition in any consent that would compel the Development to be carbon capture ready. In response, the Applicant

stated that the inclusion of any such condition would make the consent unbankable and would, thus, render the project undeliverable.

4.36 The ExA's conclusion was that the uncertainties over carbon capture storage technology meant a requirement requiring such technology was not reasonable. The ExA did not, therefore, recommend to the Secretary of State that such a requirement should be included in any development consent order that might be made. The ExA has, however, included two requirements in the Order which ensure that space for carbon capture readiness is provided for in the Development and that that space cannot be disposed of without the consent of the Secretary of State. The Applicant is also required to provide a monitoring report to the Secretary of State setting out how it is meeting the requirement to maintain space for carbon capture infrastructure. The Secretary of State accepts the ExA's arguments in this matter and considers that this approach is the correct one as it is in accord with the policy requirements set out in the NPSs.

### **Combined Heat and Power ("CHP")**

4.37 Any application to develop a thermal generating station under the Act must either include proposals for CHP facilities or contain evidence that the possibilities for CHP have been fully explored to inform the Secretary of State's consideration of the application.

4.38 The Applicant provided a CHP Statement as part of its application documentation which concluded that the provision of heat and steam to local users was not currently viable. The Development would, however, be designed as CHP-ready although any decision to install the necessary infrastructure would depend on a local demand (for heat and steam) being identified and be subject to economic feasibility.

4.39 The ExA considered CHP during the Examination in light of concerns expressed by the Environment Agency about the adequacy of the space provision for CHP set aside by the Applicant. The Environment Agency also indicated that CHP would be considered as part of the concurrent application to vary the existing Environmental Permit for the Drax Power Station.

4.40 The Applicant included a provision in the Order to require that a review of CHP opportunities is undertaken at regular intervals and provided to the Environment Agency. However, during the Examination, the Applicant submitted a revised version of the Order which removed the CHP provision on the basis that it overlapped with the Environment Agency's Environmental Permitting scheme.

4.41 The ExA disagreed with the Applicant's analysis and has re-instated the CHP provision into the version of the Order that it has submitted to the Secretary of State with its Report. The ExA considered that there were no foreseeable barriers to CHP readiness with regards to space allocation and technical feasibility and concluded that the Development would, therefore, meet all policy and legal requirements. The Secretary of State agrees with the ExA's conclusion in this matter and has decided to include the CHP provision in the Order.

## **Traffic and Transport**

4.42 The ExA notes that the NPS EN1 states that the consideration of transport impacts is an essential part of the Government's policy objectives for sustainable development.

4.43 There would be considerable traffic movements generated by the construction of the Development (which would be spread over a long period of time – around seven years in total – if both gas-fired units were built). There would be a number of peaks for traffic movements during this timescale. The Applicant stated that all construction materials would be moved to the site by road, following prescribed routes along motorway or main roads directly to the construction site. Any abnormal indivisible loads would be transported to the site by road from their landing point at Goole Docks.

4.44 The Applicant considered that there would be likely significant negative effects from traffic movements during construction but that these would not be long-term or permanent and that mitigation would be put in place to limit them (largely through a Construction Traffic Management Plan which would need to be agreed with the local authority).

4.45 There was considerable discussion of transport issues during the Examination which resulted in some amendments to the transport routes and mitigation measures.

4.46 The Canal and River Trust and the Commercial Boat Operators Association stated that they wanted to promote the use of the River Ouse and the Drax Jetty for construction traffic, but the Applicant indicated that there were significant problems in making the jetty suitable for this activity.

4.47 In conclusion, the ExA acknowledged that there would be impacts from construction traffic that might mean disruption to local people driving in the vicinity of the Development. However, the mitigation measures to be put in place would minimise the level of disruption. On this basis, the ExA considered that the impact of transport and traffic changes would be neutral in the planning balance. The Secretary of State agrees with this assessment.

## **Air Quality**

4.48 The NPSs set out that the Secretary of State should consider air quality issues in taking a decision on development consent applications for energy infrastructure. The Applicant provided an air quality assessment that looked at the potential impacts of emissions from the Development during both its construction (mainly from dust and exhaust emissions) and operation (stack emissions of a range of chemical compounds including carbon monoxide (CO), sulphur dioxide (SO<sub>2</sub>) and hydrogen chloride (HCl) gases). The Applicant concluded that the impacts of emissions would not be significant for either human or environmental receptors.

4.49 The issue was considered during the Examination when there was an exchange about the optimal height of the emissions stacks to ensure the least possible impact on air quality during the operation of the Development. The Applicant signed a number of Statements of Common Ground with several interested parties – the Environment

Agency, Natural England, North Yorkshire County Council and Selby District Council – which set out agreements on air quality issues.

4.50 The ExA concluded [ER 5.7.24] that there would be no significant negative impacts arising from the construction and the operation of the Development on sensitive air quality receptors. The ExA notes that emissions from the Development would be controlled by the Environmental Permitting regime administered by the Environment Agency. The ExA also finds that the Development would be in accord with the relevant NPSs in this regard. Finally, the ExA notes that the Order contains a number of mitigation measures to limit air quality impacts. The ExA's overall conclusion is that the impact of the issue in the planning balance is neutral in the planning balance. The Secretary of State agrees with the ExA's conclusion.

### **Noise and Vibration**

4.51 The Applicant assessed that there was potential for varying degrees of impacts from noise and vibration during construction – though this would not be significant for residential properties providing suitable mitigation measures were put in place – and operation, where the potential for significant effects was identified. However, in the case of the latter, acoustic attenuators would mitigate the impacts.

4.52 There were no concerns about noise and vibration impacts raised by Interested Parties during the Examination – with local councils and regulators all content with what was being proposed.

4.53 Having considered the evidence, the ExA concluded that there would be no significant noise and vibration effects arising from the construction, operation or decommissioning of the Development. In addition, the ExA found that the Development would accord with all relevant legislative and policy requirements and suitable mitigation was secured by Requirements in the Order. The effect on the planning balance would, therefore, be neutral. The Secretary of State agrees with this conclusion.

### **Historic Environment**

4.54 The Applicant identified a large number of heritage assets within 10km of the Development, including 19 scheduled monuments, 11 Grade I listed buildings, 17 Grade II\* listed buildings and 440 Grade II listed buildings. The Applicant indicated that there was potential for negative impacts from construction of the Development on scheduled monuments in its vicinity although these were not anticipated to be significant. There was also potential for negative impacts on the settings of heritage assets due to the visibility of the emissions stacks from the Drax Augustinian Priory.

4.55 The potential impacts of the Development on heritage assets was considered at Examination. Concerns were expressed that the Development would introduce a discordant view into an established industrial landscape and would conflict with the currently symmetrical layout of the Drax Power Station, despite attempts to mitigate its impacts. There was a discussion about whether the Drax Power Station might be considered for listed building status: it was noted that while such listing had been considered, no decision had been taken on its status.

4.56 The Secretary of State notes that there were no outstanding issues on the Historic Environment at the close of Examination and the ExA was satisfied, therefore, that there would be no significant negative effects from the construction and operation of the Development. The ExA drew attention to the provision in the Order that established a mechanism to investigate and record archaeological remains if discovered during construction. In its overall conclusion, the ExA considers that the Development meets relevant policy requirements in the NPSs. The effect of the impacts on the historic environment is deemed to be neutral in the planning balance. The Secretary of State agrees with the ExA's assessment in this matter.

### **Biodiversity**

4.57 The Applicant identified a number of impacts on biodiversity arising from the construction and operation of the Development including the temporary and permanent loss of some important sites within the Drax Power Station site. It also identified a number of designated biodiversity sites within 15km of the Development. The Applicant contends that mitigation measures set out in the Order would provide suitable safeguards for a range of creatures including bats and water voles.

4.58 The Examination considered concerns about the impacts of the Development on biodiversity including whether Biodiversity Net Gain had been demonstrated in accordance with the requirement in the National Planning Policy Framework ("NPPF"). During the Examination, this idea was comprehensively tested with the Applicant and several of the Interested Parties. In response, the Applicant made amendments to the Construction Environmental Management Plan to provide enhanced mitigation for certain biodiversity receptors. In addition, a number of Statements of Common Ground were signed by the Applicant and those Interested Parties with an interest in biodiversity – North Yorkshire County Council, Selby District Council, Natural England and the Yorkshire Wildlife Trust which look to improve the Biodiversity Net Gain.

4.59 The ExA concludes that with mitigation measures put in place, there would be no significant adverse effects on biodiversity and because there is a Biodiversity Net Gain, the effect in the planning balance is positive. The Secretary of State agrees with this conclusion. A Habitats Regulations Assessment that considers the impact of the Development on sites designated under the EU Habitats Directive is published alongside this decision. The conclusions of the Assessment are outlined in paragraphs 5.22 – 5.36 below.

### **Landscape and Visual Amenity**

4.60 The NPSs indicate that nearly all nationally significant energy infrastructure projects will have effects on the landscape and that those effects may extend over a considerable distance. The Secretary of State should, therefore, judge whether the adverse impact of any project on the landscape would be so damaging that it is not offset by the benefits (including need) of the project. It is, however, possible to mitigate those impacts in certain situations. The NPSs also consider the impact of projects on open spaces and green infrastructure.

4.61 The Applicant provided a considerable amount of material in its application documents that assessed the landscape and visual impacts of the Development, set out the factors that influenced its design and layout and set out the impacts of the Development during construction and operation. The Applicant's assessment was that there would be a significant effect on a range of local landscape features and local receptors within 3km of the Development. The significant impacts would not be mitigated by measures such as planting to screen the Development.

4.62 The effect of the Development on landscape character was one of the key issues considered during the Examination with North Yorkshire County Council and Selby District Council showing a strong interest. (North Yorkshire County Council maintained an objection to this aspect of the Development through the Examination.) There was considerable disagreement during the Examination between the Applicant and the two Councils about the level of mitigation that could reasonable be put in place to minimise visual and landscape impacts.

4.63 The ExA sought throughout the Examination to find areas of agreement between the parties on this issue, particularly in relation to the Off-site Mitigation Strategy. North Yorkshire County Council provided a revised Off-Site Mitigation Strategy which prioritised eight sites within a 3km radius of the Drax Power Station that it stated would be deliverable within five years with a project cost of £3.1 million. The Applicant did not accept the revised Strategy. It considered it was not justified and this matter was still unresolved between the parties at the end of the Examination.

4.64 In conclusion, the ExA agrees that there will be significant impacts from the Development on landscape and visual amenity despite attempts to mitigate them. The ExA challenges North Yorkshire County Council's position on mitigation and the need for community funding. It also indicates that the Applicant could have been more active in a stewardship role given the prominence of the Drax Power Station and the Development in the local area. However, the overall conclusion is that all policy requirements are satisfied but that there will be a net negative impact although the ExA says this carries only minimal weight in the planning balance because of the supportive comments on visual impacts arising from major energy infrastructure in the NPSs. The Secretary of State concurs with this assessment.

### **Flooding and Water [Quality]**

4.65 The Applicant identifies the need to consider flood risk at all stages of the planning process and to direct development away from those areas which are at the highest risk of flooding. In the case of the Development, the Applicant considers that there is a risk of flooding but concludes that there would not be any significant negative effects on flooding and water quality.

4.66 During the Examination, the ExA probed both the Applicant and other relevant bodies (the Environment Agency, North Yorkshire County Council and Selby District Council) about flooding and water quality issues. The Environment Agency confirmed that a full assessment under the provisions of the Water Framework Directive was not needed. Statements of Common Ground were signed between the Applicant, the Environment Agency and the two Councils agreeing that there would be no significant



negative effect on flooding, hydromorphology or groundwater and there were no outstanding issues to be resolved in this matter.

4.67 The ExA concluded that the Development would have no significant effects in respect of flooding, flood defences and pollution of ground and surface water and that the effect on the planning balance is neutral. The Secretary of State agrees with that position.

### **Waste Management**

4.68 The Applicant considered the generation and disposal of waste material from the construction of the Development and concluded that there would be no significant effects.

4.69 The Examination considered the issues, noting there was general agreement with the Applicant's Assessment.

4.70 The ExA concluded that the Development would accord with all relevant policies and legislation with mitigation secured in the Order and the effect in the planning balance was neutral. The Secretary of State agrees with this assessment.

### **Ground Conditions and Contamination**

4.71 The Applicant identified the potential for contaminant releases into the environment – soil, surface water and ground water. However suitable mitigation measures would be put in place in accordance with an agreed Construction Environmental Management Plan which would result in no likely significant effects.

4.72 There were no concerns raised by Interested Parties about the Applicant's assessment during Examination.

4.73 The ExA concluded that all legislative and policy requirements had been met and considered the effect in the planning balance was neutral. The Secretary of State agrees with this assessment.

### **Socio-Economics and Public Rights of Way**

4.74 The ExA states [ER 5.15.12] that the Development would not have any significant effects on socio-economic matters or on Public Rights of Way. The ExA does conclude [ER 5.5.14] that there would be disruption to agricultural practices during construction but that this would not be damaging – with mitigation being secured by Requirements in the Order. The ExA concludes that there would be employment generation as a result of the Development and concludes that the net effect on the planning balance is positive. The Secretary of State agrees with this conclusion.

### **Major Accidents and Disaster Prevention**

4.75 The ExA concluded [ER 5.16.6] that the Development would accord with all relevant legislative and policy requirements and that accident and disaster mitigation

matters are thoroughly provided for. The ExA concludes that the effect in the planning balance is neutral. The Secretary of State agrees with the ExA's analysis.

### **Statutory Nuisance and Human Health**

4.76 The ExA concluded [ER 5.17.6] that the Development would have no significant adverse impacts on nuisance or human health, with adequate provision made in the Order. The ExA judged that the effect in the planning balance was neutral. The Secretary of State agrees with that analysis.

### **Consideration of Alternatives**

4.77 The ExA concluded [ER 5.18.11] that alternative siting options for the proposed generating plant had been considered by the Applicant in line with the requirements of the NPSs and the Environmental Impact Assessment Regulations. In addition, the ExA noted that the Development would re-use an existing site for energy generation leading to a positive effect in the planning balance. The Secretary of State also notes that some of the existing infrastructure at the Drax Power Station would also be re-used and agrees with the ExA's conclusion on this matter.

### **Cumulative and Combined Effects**

4.78 The ExA concluded [ER 5.19.8] that while there would be impacts from the Development, particularly in respect of landscape and visual matters, there were not likely to be any significant cumulative effects and the impact in the planning balance was, therefore, neutral. The Secretary of State agrees with the ExA's conclusion.

### **Other Matters**

#### **The Planning Act 2008: Battery Storage**

5.1 The ExA considered whether the Battery Storage Units that are included in the Application should be classed as NSIPs as defined in the 2008 Act (for which development consent is required) or whether they constituted associated development, again, as defined in the 2008 Act, which may be included in an order granting development consent [ER 3.2.1 – 3.2.12]. The Applicant's position was that they were classified as NSIPs but the ExA concluded that because sections 14 and 15 of the Act had not been amended to refer specifically to battery storage as a form of generating station, this classification represented a policy position rather than a statement of law. However, the ExA also concluded that the Battery Storage Units met the test for associated development which was capable of being included in the Order.

5.2 It is the Government's view that Battery Storage Facilities constitute a form of "generating station" within the meaning of the legislation and, therefore, they can currently qualify as NSIPs if they meet the criteria set out in sections 14 and 15 of the Act. It is not correct to say that the Government's position to treat Battery Storage Facilities as NSIPs is simply a matter of policy. The Secretary of State, therefore, disagrees with the way in which the ExA has characterised the Government's position

and concludes that the Battery Storage Facilities should be categorised as NSIPs in this case.

5.3 The Application is made on the basis that the Development includes up to four individual generating stations (Unit X and Unit Y and the two related Battery Storage Units). The ExA concluded that the Battery Storage Units would, in fact be reliant on Units X and Y and would be incapable of independent operation [ER 3.2.9]. It is arguable, therefore, that each of the Battery Storage Units in fact constitutes an integral part of Units X and Y respectively. However, the Secretary of State does not consider it is necessary to resolve this matter in this case given that each of the prospective generating stations exceeds the capacity thresholds necessary to be considered an NSIP in its own right. In future, similar projects may need to consider this issue to determine how Battery Storage Facilities which do not independently meet the NSIP thresholds should be categorised within application for development consent under the Act.

5.4 The Secretary of State also takes issue with the ExA's conclusion [ER 3.2.11] that, were she to conclude that the Battery Storage Units are NSIPs, then this part of the Application should be considered against section 105 of the 2008 Act because none of the NPSs has effect in relation to battery storage developments.

5.5 The Secretary of State's analysis of the 2008 Act's provisions in relation to this matter is that the Application should be treated as a whole and determined under section 104 (Decisions in cases where national policy statement has effect). This section, and section 105 (Decisions in case where no national policy statement has effect) are mutually exclusive and it would not be correct to determine different parts of the Application under different provisions. In any event, the Secretary of State does not consider that determining the whole application under section 104 has a material impact on the overall outcome in this case. Section 104(2)(d) of the 2008 Act enables the Secretary of State to give consideration to any important and relevant matters appropriate to this aspect of the application. In this regard, the Secretary of State agrees with the ExA that the planning impacts and environmental effects of the Development including battery storage have been assessed and, therefore, its acceptability can be determined on the strength of the ExA's Report [ER 3.2.12]. The Secretary of State further notes that, while there is no National Policy Statement which explicitly covers battery storage projects, the Overarching National Policy Statement for Energy (EN-1) does consider that the storage of energy will, in general terms, play an important role in the United Kingdom's energy mix. This position is reinforced in the 'Smart Systems and Flexibility Plan' published by BEIS and Ofgem in July 2017. In this case the Battery Storage Facilities would support Unit X and Unit Y in providing fast and flexible electricity export and other ancillary services. Therefore, the Secretary of State's conclusions regarding the need for the Development set out at paragraph 4.20 above are unaltered.

#### **The Climate Change Act 2008 (2050 Target Amendment) Order 2019: "Net Zero"**

5.6 As noted above, the policies contained in the NPSs reflect wider UK decarbonisation objectives arising from the legally binding targets set out in the Climate Change Act 2008 ("the CCA") which, as originally enacted, required an at least 80% reduction in the UK's GHGs emissions by 2050 when measured against the 1990

baseline for such emissions. On 26 June 2019, the Climate Change Act 2008 (2050 Target Amendment) Order 2019 was made (SI 2019 No.1056), coming into force the following day. This amended the CCA by replacing the 80% target with 100%.

5.7 The Secretary of State considers that the amendment to the CCA, which sets a new legally binding target of an at least 100% reduction in GHG emissions against the 1990 benchmark (“Net Zero”), is a matter which is both important and relevant to the decision on whether to grant consent for the Development and that regard should be had to it when determining the Application. The new target post-dates the NPSs and, while there is a reference in the ExA’s Report to Net Zero, the ExA does not deal with its implications due to the timing of the amendment to the CCA [ER 3.4.2].

5.8 The Secretary of State notes with regard to the amendment to the CCA that it does not alter the policy set out in the National Policy Statements which still form the basis for decision making under the Act. Section 2.2 of EN-1 explains how climate change and the UK’s GHG emissions targets contained in the CCA have been taken into account in preparing the suite of Energy NPSs. As paragraph 2.2.6 of EN-1 makes clear, the relevant NPSs were drafted considering a variety of illustrative pathways, including some in which *“electricity generation would need to be virtually [greenhouse gas] emission-free, given that we would expect some emissions from industrial and agricultural processes, transport and waste to persist.”* The policies contained in the relevant NPSs regarding the treatment of GHG emissions from energy infrastructure continue to have full effect.

5.9 The move to Net Zero is not in itself incompatible with the existing policy in that there are a range of potential pathways that will bring about a minimum 100% reduction in the UK’s emissions. While the relevant NPSs do not preclude the granting of consent for developments which may give rise to emissions of GHGs provided that they comply with any relevant NPS policies or requirements which support decarbonisation of energy infrastructure (such as CCR requirements), potential pathways may rely in future on other infrastructure or mechanisms outside the planning regime offset or limit those emissions to help achieve Net Zero. Therefore, the Secretary of State does not consider that Net Zero currently justifies determining the application otherwise than in accordance with the relevant NPSs or attributing the Development’s negative GHG emissions impacts any greater weight in the planning balance. In addition, like the ExA, the Secretary of State does not consider there to be any evidence that granting consent for the Development would in itself result in a direct breach of the duties enshrined in the CCA, given the scope of the targets contained in the CCA which apply across many different sectors of the economy. This remains the case following the move to Net Zero and therefore she does not consider that the exception in section 104(5) of the 2008 Act should apply in this case.

### **Compulsory Acquisition**

5.10 The Secretary of State notes the ExA’s assessment that, in the event a decision to grant consent is taken, consideration would need to be given to the Applicant’s request for the compulsory acquisition of land, rights over land and the temporary possession of land is justified in the current case.

5.11 The Planning Act 2008, together with related case-law and guidance, sets out that compulsory acquisition can only be granted if certain conditions are met.

5.12 The Applicant states that in order to ensure that the Development can be built, maintained and operated, the acquisition of a number of property interests in third party ownership are necessary. In respect of the compulsory acquisition of land, the Applicant states that this power is only requested on land where other powers would not be sufficient or appropriate to enable the construction, operation and maintenance of the Development. Also, new rights are required to construct, operate and maintain the necessary infrastructure on land not within the Applicant's ownership.

5.13 The Applicant is also seeking the compulsory acquisition of new rights over land occupied by National Grid which is classified as a 'statutory undertaker'. While the land of a statutory undertaker may be compulsorily acquired, that acquisition may only be granted providing that the right can be taken without serious detriment to the carrying out of that undertaking.

5.14 The ExA assessed each of the relevant issues in considering whether the case for compulsory acquisition was made in the current Application. The ExA noted [ER 9.5.8] that there were no outright objections to the compulsory acquisition or temporary acquisition of land during the Examination.

5.15 During the Examination, the Applicant stated that it was hoping to achieve voluntary agreement over the acquisition of rights with all relevant parties. At the end of the Examination, in response to a request from the ExA, the Applicant set out that it had settled negotiations on compulsory acquisition with most of the parties over whose land rights were sought, but there were still four plots of land owned by an individual (Plots 8, 10, 13 and 15) where agreements were still being finalised.

5.16 The ExA queried the justification for the acquisition of the whole of Plot 8 which had been earmarked in compliance with CR policy for land necessary to accommodate carbon capture storage infrastructure. In response, the Applicant amended its request for the acquisition of Plot 8 to one for the acquisition of rights over it. The ExA also challenged the Applicant's justification for the compulsory acquisition of other plots but was generally satisfied by the answers received.

5.17 However, consistent concerns were raised by an interested party throughout the Examination about the compulsory acquisition of Plots 10, 13 and 15 and these concerns were not resolved by agreement during the Examination. However, the ExA concluded [ER 9.6.11] that the Applicant had satisfactorily addressed the concerns raised.

5.18 The ExA's Report draws all the various arguments together and concludes that the case is made by the Applicant for the compulsory acquisition of land or rights over land in respect of the revised list of plots and that there is a justification for what is being requested. However, the ExA concludes [ER 9.6.7] that as the case for development consent is not made out, there is no compelling argument that it would be in the public interest to acquire the land and rights over it.

5.19 However, the ExA also addresses the position where the Secretary of State takes the view that development consent should be granted for the Development (in either a two- unit or one-unit configuration) and considers the consequences for the compulsory acquisition. The ExA concludes that, despite the absence of objections to the grant of the compulsory acquisition powers and the fact that private agreements have been put in place for most of the plots subject to the compulsory acquisition powers, there would, potentially, be substantial losses for individuals as well as for communities and businesses were the powers to be granted. Nevertheless, the ExA recommends [ER 9.6.12 and 9.6.13] that the Secretary of State could conclude that the relevant Planning Act tests have been met (including in respect of statutory undertakers).

5.20 The ExA also provides the Secretary of State with a recommendation in respect of a Unit X only outcome that the Planning Act tests would also be met in respect of this configuration as well.

5.21 The Secretary of State agrees with the ExA that, in the event consent is granted the case has been made against the Planning Act tests in respect of the grant of compulsory acquisition powers for the Development in both two unit or one unit configurations.

## **Habitats Regulations Assessment**

### **Impacts on European Wildlife Sites and Protected Species**

#### **Effects on European Sites and their features**

5.22 The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the Habitats Regulations”) require the Secretary of State to consider whether a project would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Directive. If likely significant effects (“LSE”) cannot be ruled out, then an Appropriate Assessment (“AA”) must be undertaken by the Secretary of State to address potential adverse effects on site integrity. Consent may not be granted if it is ascertained that it will not adversely affect the integrity of a European site. The Secretary of State’s Habitats Regulations Assessment (“HRA”) for the Development is published alongside this decision letter. Its findings are summarised below.

5.23 The Applicant considered the potential impacts of the proposed Development on ten sites designated under the Habitats Directives which were identified as being within a 15km radius of it:

- Lower Derwent Valley Special Area of Conservation (“SAC”);
- Lower Derwent Valley Special Protection Area (“SPA”);
- Lower Derwent Valley Ramsar;
- River Derwent SAC;
- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar;

- Skipwith Common SAC;
- Thorne and Hatfield Moors SPA; and
- Thorne Moor SAC.

5.24 A LSE could not be excluded at all ten European sites due to the potential for multiple site features to be affected by air emissions from the Development during operation.

5.25 A LSE could not be excluded at four of the ten European sites (Lower Derwent Valley SAC, River Derwent SAC and Humber Estuary and Ramsar) due to the potential for habitat disturbance and hydrological changes to affect the otter, sea lamprey and river lamprey features of these sites.

#### Conclusions on Air Quality

5.26 Despite the Applicant's Habitats Regulations Assessment ("HRA") Report identifying some exceedances in air emissions thresholds, these would fall far below the point at which research suggests one might observe a potentially adverse effect on the qualifying habitats at these sites, being of a level that falls within the bounds of natural variation and which is predicted to lead to negligible and imperceptible change.

5.27 The Applicant and NE agreed that no further direct mitigation of air emissions was necessary beyond setting an appropriate stack height and including NO<sub>x</sub> and ammonia emissions control by use of a Selective Catalytic Reduction ("SCR") process with an annualised ammonia emissions budget.

5.28 The appropriate stack height is secured by provisions in Schedule 13 of the Order.

5.29 The Environment Agency ("EA") and NE agreed that operational emissions from the Development would be further controlled through the EA's Environmental Permitting regime. The EA confirmed it would only approve an Environmental Permit if it did not adversely affect a European site.

5.30 The Secretary of State has considered the Applicant's HRA in light of the conservation objectives for the ten European sites. Given the low magnitude of the air quality effects and the conservatism of the air quality modelling, the Secretary of State agrees with the recommendations of the ExA and the views of NE and the Applicant and concludes that subject to the mitigation secured at Schedule 13 of the Order, the Development will not have an adverse effect on the integrity of any of the ten European sites, either alone or in combination with other plans and projects.

#### Conclusions on Habitats Disturbance and Hydrological Changes

5.31 The Applicant's HRA Report identified a potential for indirect impacts to otters, sea lamprey and river lamprey using functionally linked habitat during construction and operation as a result of pollution to watercourses. It identified potential for disturbance to otters present as a result of light, visual, noise and vibration. During construction, a risk of mortality to otters was identified as a result of collision with moving construction vehicles or interaction with construction materials and compounds and excavations.

The Report considered that such impacts may result in the killing or injury of otters, the reduction and degradation of available otter and fish habitat and food sources and/or displacement of otters from areas used for commuting, foraging, resting and breeding.

5.32 Measures designed to avoid and mitigate against these effects are secured in the Order through the following Requirements for the implementation of an agreed:

- Landscape and Biodiversity Strategy (LBS) (secured by Requirement 8)
- Construction Environmental Management Plan (secured by Requirement 17)
- Decommissioning Environmental Management Plan (secured by Requirement 26)
- Surface Water Drainage Strategy (secured by Requirements 13 and 17)
- Ecologically sensitive lighting design (secured by Requirement 10).

5.33 By the close of Examination all relevant parties were satisfied with the final versions of plans to ensure appropriate mitigation of any potential impacts of disturbance and hydrological effects on otter, sea lamprey and river lamprey.

5.34 NE considers that there would be no adverse effects on the integrity of any European site resulting from disturbance and hydrological impacts and the ExA states that it is 'content that there would be no adverse effect on the integrity of the European sites or their qualifying features as a result of hydrological impacts and impacts to functionally linked land from the proposed Development alone or in combination with other plans and projects. Adequate mitigation is secured in the Recommended Order [ExA 6.5.89].

5.35 The Secretary of State is satisfied that appropriate mitigation is secured via Requirements in the Order, and that any impact to otters from the Development alone would be minor and short term, with no perceptible effect on site populations, and that any residual effects on sea lamprey and river lamprey from the Development alone would be so minimal as to be imperceptible. The Secretary of State is further satisfied that there would be no in-combination effect with other plans or projects

5.36 The Secretary of State has considered the Applicant's HRA in light of the conservation objectives for the relevant European sites. Given the low magnitude of the effects of hydrological changes and disturbance, she agrees with the recommendations of the ExA and the views of NE and the Applicant and concludes that, subject to the mitigation secured at Requirements 8, 10, 13, 17 and 26 of the Order, the Development will not have an adverse effect on the integrity of any of the European sites, either alone or in-combination with other plans and projects.

## **6. Conclusions on the Case for Development Consent**

6.1 In taking a decision on whether to grant or refuse development consent under the terms of the Planning Act 2008 in cases where an NPS has effect, section 104(3) of the Act requires the Secretary of State to determine the Application in accordance with any relevant NPS except to the extent that one or more of the exceptions set out in section 104 (4) – (8) applies. In particular, section 104(7) of the Act provides an



exception where the Secretary of State is satisfied that the adverse impacts of the Development would outweigh its benefits. The Secretary of State, therefore, needs to consider the impacts of any proposed development and weigh these against the benefits of any scheme.

6.2 First of all, the Secretary of State needs to consider whether the proposed Development is in accordance with EN-1 (the Overarching NPS for Energy). As indicated in paragraph 4.4 above, the ExA has not applied the policy presumption in favour of granting consent for energy NSIPs set out in EN-1 when determining whether the Development was in accordance with the relevant NPSs. The Secretary of State considers that the Development should benefit from the presumption because there are no more specific and more relevant NPS policies which clearly indicate that consent should be refused and therefore the Development accords with the relevant NPSs.

6.3 In the case of the Development, the ExA's assessment of impacts and benefits under section 104(7) accords a neutral weighting to the following issues: CCS readiness; CHP readiness; traffic and transport; air quality; noise and vibration; the historic environment; flooding and water [quality]; waste management; ground conditions and land contamination; major accident and disaster prevention; the Habitats Regulations Assessment; and cumulative and combined effects.

6.4 The ExA gives a positive weight to biodiversity outcomes, socio-economics and the proposed re-use of existing infrastructure at the Drax Power Station.

6.5 Set against the positive aspects of the Development, the ExA attaches considerable negative weight to impacts on decarbonisation and climate change. While the landscape and visual impacts of the Development would be significant, the ExA takes the view that this negative impact does not weigh heavily in the overall consideration of planning balance for the Development.

6.6 The Secretary of State considers that the ExA's interpretation of the need case set out in the NPSs is incorrect. In taking the position it did on need and GHG emissions, the ExA arrived at a position where it recommended that consent for the Development should be refused. The Secretary of State considers that the NPSs support the case for new energy infrastructure in general and, in particular, the need for new CCR fossil fuel generation of the kind which the Development would provide. While acknowledging the GHG emissions from the Development, the generating capacity of the Development in either two- or one-unit configurations is a significant argument in its favour, with a maximum of 3.8GW possible if the Applicant builds out both gas-fired and battery storage units as proposed. Therefore, the Secretary of State considers, that the Development would contribute to meeting the identified need for CCR fossil fuel generation set out in the NPS and that substantial weight should be given to this in the planning balance.

6.7 In assessing the issue of GHG emissions from the Development and the ExA's conclusions in this matter, the Secretary of State notes that the Government's policy and legislative framework for delivering a net zero economy by 2050 does not preclude the development and operation of gas-fired generating stations in the intervening period. Therefore, while the policy in the NPS says GHG emissions from fossil fuel

generating stations are accepted to be a significant adverse impact, the NPSs also say that the Secretary of State does not need to assess them against emissions reduction targets. Nor does the NPS state that GHG emissions are a reason to withhold the grant of consent for such projects. It is open to the Secretary of State to depart from the NPS policies and give greater weight to GHG emissions in the context of the Drax application but there is no compelling reason to do so in this instance.

6.8 As far as the negative visual and landscape impacts are concerned, the Secretary of State is content to accept the ExA's assessment of overall weighting of this matter. There are no other negative issues that weigh against the Development.

6.9 As noted above, the ExA identifies positive effects from the Development in respect of biodiversity outcomes, socio-economics and the proposed re-use of existing infrastructure at the Drax Power Station. The Secretary of State's overall conclusion on the planning balance is that there are strong arguments in favour of granting consent for the full, two gas units and two battery storage units, 3.8GW project because of its contribution to meeting the need case set out in the NPSs. On balance therefore Secretary of State considers that the benefits of the Development outweigh its adverse effects.

6.10 While noting the exception to the requirement to determine development consent applications in accordance with the relevant NPSs identified in section 104(7) of the Planning Act, other exceptions are also identified. These exceptions apply where granting consent would: lead to a breach of the UK's international obligations (section 104(4)); lead to a breach of any duty imposed on the Secretary of State by or under any enactment (section 104(5)); be unlawful (section 104(6)); and, where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met (section 104(8)).

6.11 In the case of section 104(4), there is no evidence that granting consent for the Development would lead to a breach of the UK's international obligations

6.12 In the case of section 104(5), notwithstanding the ExA's conclusions on the Development's adverse climate change impacts, it also found that there was no evidence to suggest that granting consent for the Development would in itself lead to the Secretary of State to be in breach of the duty set out in the CCA to ensure that the UK's target for 2050 is met. The Secretary of State agrees with this conclusion.

6.13 In the case of section 104(6), given the position already set out above and a consideration of all other relevant matters, there is nothing that leads the Secretary of State to conclude that the grant of consent for the Development would be unlawful.

6.14 Finally, in relation to section 104(8), the Secretary of State does not believe that a condition to preclude deciding the Application in accordance with a NPS has any relevance to the Development.

### **Equality Act 2010**

6.15 The Equality Act 2010 ("the Act") includes a public sector duty which requires a public authority, in the exercise of its functions, to have due regard to the need to:

(a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g age; gender reassignment; disability, marriage and civil partnerships; pregnancy and maternity; religion and belief; and race) and persons who do not share it ; and (c ) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.16 The Secretary of State has considered the potential impacts of a development of this type in the context of the general equality duty and concluded that they are not likely to result in any significant differential impacts on any of the protected characteristics. In considering the Application, the Secretary of State has not been presented with any evidence which suggests that such differential impacts are likely in the present case.

### **Human Rights**

6.17 The Secretary of State has considered the potential infringement of human rights by the Development, in relation to the European Convention on Human Rights, including any infringement of the Convention as a result of the inclusion of compulsory acquisition powers in the Order. She considers that any interference with human rights arising from implementation of the Development is proportionate, legitimate and strikes a fair balance between the rights of the individual and the public interest, and, that compensation would be available in respect of any quantifiable loss. The Secretary of State agrees with the ExA's conclusion [ER 9.6.15 and 11.1.12] that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998. She has no reason to believe, therefore, that the grant of the Order would give rise to any unjustified interference so as to conflict with the provisions of the Human Rights Act 1998.

### **Late Submissions**

6.18 The Applicant addressed representations to the Secretary of State after the ExA's Report had been received in the Department (on 4 July 2019). The first representation, dated 12 July 2019, referred to an Asset Protection Agreement ("APA") under discussion with National Grid Carbon Limited. The second representation, submitted on 5 September 2019, set out the Applicant's views on how the amendment to the CCA (to require a minimum 100% net reduction in Greenhouse Gas Emissions by 2050) should be considered by the Secretary of State in her decision-making on the case.

6.19 The Secretary of State notes that the Applicant's letter of 12 July 2019 does not seek to amend the Application and is provided for information and completeness only. The Secretary of State, therefore, does not consider that this is a matter that is relevant to her decision.

6.20 In respect of the second submission, the Secretary of State does not consider that this provides any information that alters her conclusions set out in paragraphs 5.6 – 5.9 and 6.7 above.

## **Environmental Permit**

6.21 The Secretary of State notes that the proposed Development would be subject to the Environmental Permitting regime under the Environmental Permitting Regulations 2016 (“EPR”) covering operational emissions from the generating station - in the Environment Agency’s Statement of Common Ground submitted at Examination.

6.22 The Secretary of State must be satisfied that potential emissions from the Proposed Development can be adequately regulated under the EPR, as outlined in paragraph 4.10.7 of NPS EN-1. EN-1 also offers the following: “the [decision-maker] should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational permits or licences or other consents will not subsequently be granted. The Secretary of States notes that the ExA records that the Environment Agency confirmed that it was:

*“of the opinion that a project of this type and nature should be capable of being adequately regulated under the Environmental Permitting Regulations (EPR) and at this point the Environment Agency knows of no obvious errors or issues which would prevent a permit being granted at this time. However, as the permit application has not yet been fully assessed it would be premature to provide comments on whether or not a permit would be issued at this stage.”*

6.23 In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit will not be granted in due course.

## **Natural Environment and Rural Communities Act 2006**

6.24 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must have regard to the purpose of conserving biodiversity and, in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

6.25 The Secretary of State is of the view that the ExA’s report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

## **7. Secretary of State’s conclusions and decision**

7.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent for the Development. The Secretary of State considers that the Development would be in accordance with the relevant NPSs and, given the national need for such development as set out in the relevant NPSs, the Secretary of State does not believe that its benefits are outweighed by the Development’s potential adverse impacts, as mitigated by the proposed terms of the Order. As such, the Secretary of State has decided to make the Order granting development consent, to include modifications made during Examination and

recommended by the ExA and by her officials. The compulsory acquisition powers sought by the Applicant are also granted.

## **8. Modifications to the Order by the Secretary of State**

8.1 The Secretary of State has made minor modifications to the Order recommended by the ExA as follows:

- Article 6 (benefit of the Order) has been amended for consistency with other recent Orders which provide for National Grid Gas plc and National Grid Electricity Transmission plc to have the benefit of provisions relating to specific gas/electricity works;
- Article 44 (guarantees in respect of payment of compensation) has been amended to clarify that the Secretary of State must approve both the form and the amount of any guarantee of alternative form of security provided under that provision;
- Schedule 1, description of Work No.5 (f) has been amended to clarify that reference to total installed capacity in this context is a reference to thermal input capacity rather than gross electrical output capacity;
- Schedule 2, Requirement 6 (approved details and amendments to them) has been amended to remove reference to documents certified under article 40 and the parameters specified in Schedule 13. The Secretary of State does not consider it appropriate for amendments to these documents or parameters, which are referred to on the face of the Order, to be approved in writing by the relevant planning authority. Schedule 6 of the 2008 Act provides an appropriate procedure to apply to the Secretary of State for changes to these aspects of the Order should they be necessary in future;
- Schedule 2, Requirement 7 (detailed design approval) has been amended to ensure that paragraph (11) refers to numbered works 1, 2, 3, 4, 5, 6 and 9A. It is assumed that the omission of numbered works 3B and 9A from the recommended draft Order was an error as approvals in respect of those works are also required under Requirement 7;
- Schedule 2, Requirement 16 (Archaeology) has been amended to make clear that any written scheme of investigation approved under paragraph (1) of the requirement must be implemented as approved; and
- Schedule 2, Requirement 21 (Decommissioning strategy) has been amended to clarify that this provision is without prejudice to any other consent or permission which may be required to decommission any part of the authorised development.

8.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of

language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

## **9. Challenge to decision**

9.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

## **10. Publicity for decision**

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

10.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has 14 given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

**GARETH LEIGH**  
**Head of Energy Infrastructure Planning**

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

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

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/drax-re-power/>

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



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

## **Drax Power Station Re-power Project**

Examining Authority's Report  
of Findings and Conclusions

and

Recommendation to the Secretary of State for Business, Energy and  
Industrial Strategy

---

Examining Authority

Richard Allen B.Sc PGDip MRTPI – Lead Member of the Panel

Menaka Sahai M.Sc (Planning) M.Sc (Urban Design) MRTPI FRSA – Panel  
Member

**4 July 2019**



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# OVERVIEW

File Ref: EN010091

The Application was made under section (s) 37 of the Planning Act 2008 (PA2008) and was received in full by The Planning Inspectorate (the Inspectorate) on 29 May 2018. The Applicant is Drax Power Limited. The Application was accepted for examination on 26 June 2018. The examination of the application began on 4 October 2018 and was completed on 4 April 2019.

The Proposed Development is to decommission up to two existing coal-fired units (known as Units 5 and 6, each with a capacity of up to 660 Megawatts (MW)) and replace with newly constructed gas-fired units (known as Units X and Y) utilising some of the pre-existing infrastructure. Each unit would comprise combined cycle gas turbine (CCGT) and open cycle gas turbine (OCGT) technology, with a proposed capacity of up to 1,800MW. Each unit would also have a battery storage capability of up to 100MW each (subject to technology and commercial considerations), giving the Proposed Development a combined capacity of up to 3,800MW. In addition, the Proposed Development comprises: gas insulated switchgear (GIS) banking buildings, a natural gas receiving facility (GRF) compound, above ground gas installation (AGI), an underground gas pipeline connection, underground electrical connections, temporary construction laydown areas, Carbon Capture Storage (CCS) readiness reserve space, retained and enhanced landscaping and biodiversity, demolition and construction of sludge lagoons, removal of existing 132 kilovolt (kV) overhead line (OHL), pylons and foundations, construction of temporary passing place on Rusholme Lane, and further associated development. The proposed Units X and Y would be constructed on land within the existing coal-fired Power Station Site, on land currently occupied by existing storage buildings.

The Proposed Development requires a connection to the gas transmission system. This would be facilitated through a 3 kilometre (km) gas pipeline which would connect to the National Grid Feeder line lying east of the Power Station Site. At the connection point, an AGI substation for both the Applicant and National Grid Gas (NGG) would need to be constructed. Because of this, and the need to provide land for CCS readiness, the Applicant seeks Compulsory Acquisition (CA) powers to acquire land, new rights over land and to extinguish existing rights over land outside of the Power Station Site to facilitate these works.

## **Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State should withhold consent for the reasons set out in this Report.

If, however the Secretary of State decides to give consent for the Proposed Development as made, then the Examining Authority recommends that the Order be made in the form attached in Appendix D to this Report.

Alternatively, the Secretary of State may decide to give consent for Unit X only and associated infrastructure. If so, then the Examining Authority has prepared an Alternative Order to be made in the form attached in Appendix E to this Report.

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## ERRATA SHEET – Drax Power Station Re-Powering – Ref. EN010091

### Examining Authority`s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 4 July 2019

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

Page No.	Paragraph	Error	Correction
1	1.1.2	“Work No 4 – a new GIS banking buildings”	“Work No 4 – new GIS banking buildings”
4	1.4.8 1 <sup>st</sup> Bullet	“...[EV-009] was published....”	“...[EV-009] were published....”
4	1.4.8 2 <sup>nd</sup> Bullet	“....[EV-013] was published...”	“....[EV-013] were published...”
4	1.4.8 3 <sup>rd</sup> Bullet	“....[EV-014] was published....”	“....[EV-014] were published....”
5	1.4.8 4 <sup>th</sup> Bullet	“....[EV-015] was published....”	“....[EV-015] were published....”
7	1.4.18 2 <sup>nd</sup> Bullet	“comment on WRs made the Applicant and other IPs”	“comment on WRs made by the Applicant and other IPs”
7	1.4.20	“The ExA does therefore consider it necessary.....”	“The ExA does not therefore consider it necessary.....”
9	1.6.1	“Habitats Assessment Regulations”	“Habitats Regulations Assessment”
14	2.1.11 1 <sup>st</sup> Bullet	“up to two heat steam recovery generators (HSRG),.....”	“up to two heat recovery steam generators (HRSG).....”
20	2.1.48	“....there would no remaining coal-fired units...”	“....there would be no remaining coal-fired units...”
25	2.3.7	“....identified 10 European sites with 15km of the Proposed Development.”	“....identified 10 European sites within 15km of the Proposed Development.”
26	2.4.2	Planning Permission was granted by the Department of Energy and Climate Change under s36 of the Electricity Act 1989	Delete first sentence. “Units 1 to 4 are now all in biomass use; Unit 4 being the last to convert in August 2018.”

		(2009/0694/GOV) to develop a 290MW biomass fuelled electricity generating station on 10 August 2011 for four of the six existing coal-fired units. Units 1 to 4 are all in biomass use; Unit 4 being the last to convert in August 2018.	
29	3.2.16	"....except to the extent that one or more of subsections 108(4) to (8)."	"....except to the extent that one or more of subsections 108(4) to (8) applies."
31	3.3.6 4 <sup>th</sup> Bullet	"...that demand for electricity, could double demand over the next forty years.."	"...that demand for electricity, could double over the next forty years.."
31	3.3.7	"....a presumption in favour granting consent...."	"....a presumption in favour of granting consent...."
45	3.5.1	<ul style="list-style-type: none"> <li>• "Eggborough Gas Fired Generating Station Order 2018;</li> <li>• Ferrybridge Multifuel 2 Power Station Order 2015;</li> <li>• Triton Knoll Electrical System Order 2016;</li> <li>• Thorpe Marsh Power Station Order 2011;</li> <li>• Knottingley Power Project Order 2015;</li> <li>• Ferrybridge Multifuel 2 Power Station Order 2015;</li> <li>• Hinkley Point C New Nuclear Power Station Order 2016."</li> </ul>	<ul style="list-style-type: none"> <li>• Eggborough Gas Fired Generating Station Order 2018;</li> <li>• Ferrybridge Multifuel 2 Power Station Order 2015;</li> <li>• Triton Knoll Electrical System Order 2016;</li> <li>• Thorpe Marsh Gas Pipeline Order 2016</li> <li>• Knottingley Power Project Order 2015;</li> <li>• Hinkley Point C New Nuclear Power Station Order 2013."</li> </ul>
49	4.1.3 2 <sup>nd</sup> Bullet	"....whether or not the Proposed Development conformed the energy suite...."	"....whether or not the Proposed Development conformed to the energy suite...."
68	5.2.55	"....carbon emissions as separate matters."	"....carbon emissions as separate matters."
90	5.7.25	"....ensure mitigation identified in the ES [APP-069] to [APP 087] is carried out are adequately carried out...."	"....ensure mitigation identified in the ES [APP-069] to [APP 087] is adequately carried out...."

148	7.2.12	"Requirements 22 and 23 (CHP delivery and monitoring) would ensure CCR is provided"	"Requirements 22 and 23 ('Carbon capture readiness reserve space' and 'Carbon capture readiness monitoring report') would ensure CCR is provided"
160	8.2.11	"....comparable date in or R17 letter...."	"....comparable date in our R17 letter...."
161	8.2.14	"....to make representations on the R17 [PD-018]...."	"....to make representations on the R17 letter [PD-018]...."
173	9.5.13	"....wider land to the west of Plot 9 was necessary as it could be clarified at this stage...."	"....wider land to the west of Plot 9 was necessary as it could not be clarified at this stage...."
173	9.5.15	"Mr Watson in respect to Pots 10, 13 and 15...."	"Mr Watson in respect to Plots 10, 13 and 15...."
180	Heading of table 10.1	"Principle Areas for Change"	"Principal Areas for Change"



# **1. INTRODUCTION**

## **1.1. BACKGROUND**

1.1.1. The Application for the Proposed Development (Examination Library reference [APP-001] to [APP-138]) was submitted by Drax Power Limited (the Applicant) to the Inspectorate on 29 May 2018 under s37 of the PA2008 and accepted for Examination s55 of the PA2008 on 26 June 2018 [PD-001].

1.1.2. The Proposed Development is for up to four generating stations with a combined gross electrical output capacity of up to 3,800MW, comprising:

- Work No 1 – an electricity generating station (Unit X) fuelled by natural gas and with a gross electrical output capacity of up to 1,800MW including up to two gas turbines, one turbine hall, a new main pipe rack, modifications to the existing steam turbine, generating plant and turbine hall building, a new underground gas pipeline, and associated works (ground preparation, lighting, roadways and car parking, drainage and waste management, and landscaping);
- Work No 2 – an electricity generating station (Unit Y) fuelled by natural gas and with a gross electrical output capacity of up to 1,800MW including up to two gas turbines, one turbine hall, a new main pipe rack, modifications to the existing steam turbine, generating plant and turbine hall building, a new underground gas pipeline (ground preparation, lighting, roadways and car parking, drainage and waste management, and landscaping);
- Work No 3 – up to two battery storage facilities including a structure protecting the battery energy storage cells;
- Work No 4 – a new GIS banking buildings;
- Work No 5 – a natural GRF compound;
- Work No 6 – an AGI including creation of a permanent access from Rusholme Lane, creation of a permanent access into the field to the south of Dickon Field Drain, and creation of a culvert on Dickon Field Drain;
- Work No 7 – an underground gas pipeline connection, approximately 3km in length and up to 600 millimetres (mm) nominal diameter, together with telemetry cabling;
- Work No 8 – an up to 400 kilovolt (kV) underground electrical connection between the new gas insulated switchgear banking buildings and the existing National Grid substation busbars;
- Work No 9 – temporary construction laydown areas including two means of access, and car parking;
- Work No 10 – CCS readiness reserve space and diversions for public rights of way;
- Work No 11 – retained and enhanced landscaping and biodiversity enhancement measures;
- Work No 12 – decommissioning and demolition of sludge lagoons and construction of replacement sludge lagoons bund walls, underground pipework, valves and sluices and access roads;

- Work No 13 – removal of an existing 132kV overhead line (OHL) and removal of two 132kV pylons and foundations;
- Work No 14 – construction of a temporary passing place on Rusholme Lane; and
- Associated development in connection with and in addition to work nos. 1–14 but only within the Order Limits and insofar as it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

1.1.3. The location of the Proposed Development is shown in the Environmental Statement (ES) on Figure 1-1 of ES Chapter 1 [APP-069] and the final version of the submitted Land Plans [REP5-004]. The Proposed Development is located largely within the existing Drax Power Station complex. The associated pipeline area extends to the east and the CCS reserve space would be on adjacent land to the east. The Proposed Development is entirely within Selby District Council's (SDC) and North Yorkshire County Council's (NYCC) administrative areas.

1.1.4. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry of Housing, Communities and Local Government (MHCLG) in its decision to accept the Application for Examination in accordance with s55 of PA2008 [PD-001].

1.1.5. The Applicant states in the application form [APP-003] that the Proposed Development is located in England, is not an offshore generating station and includes the construction of a generating station with a capacity of more than 50MW. The Inspectorate agreed with the Applicant's view that the Proposed Development meets the criteria under sections 14(1)(a) and 15(2) of PA2008, that it is an NSIP, and that it requires development consent in accordance with s31 of PA2008.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

1.2.1. On 16 July 2018, Richard Allen and Menaka Sahai were appointed as the Examining Authority (ExA) for the Application under s78 and s79 of PA2008 [PD-005a] on behalf of the SoS.

## **1.3. THE PERSONS INVOLVED IN THE EXAMINATION**

1.3.1. The persons involved in the Examination were:

- Those entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party (SP) who requested to become an IP;
- Affected Persons (APs) who were affected by a compulsory acquisition (CA) and / or temporary possession (TP) proposal made as part of the Application and objected to it at any stage in the Examination; and
- Other persons (OPs) invited to participate in the Examination by the ExA on the basis that the Examination would benefit by their

participation, even though these persons did not have the formal standing of IPs or APs.

## **1.4. THE EXAMINATION AND PROCEDURAL DECISIONS**

- 1.4.1. The Examination began on 4 October 2018 and concluded on 4 April 2019. The principal components and events of the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A of this Report.

### **The Preliminary Meeting**

- 1.4.2. On 6 September 2018, The ExA wrote to all IPs, SPs and OPs under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) (The Rule 6 Letter) inviting them to the Preliminary Meeting (PM) and an Open Floor Hearing (OFH) [PD-004], outlining:
- The arrangements and agenda for the PM;
  - an Initial Assessment of the Principal Issues;
  - the draft Examination Timetable of the Application;
  - availability of RRs and application documents;
  - Procedural Decisions made by the ExA; and
  - notification of an OFH to be held immediately following the PM.
- 1.4.3. The PM took place on Thursday, 4 October 2018 at Goole Leisure Centre, North Street, Goole DN14 5QX. A digital audio recording [EV-002] and [EV-003] and a note of the meeting [EV-003a] were published on the Inspectorate's National Infrastructure Planning website (the Inspectorate website).

### **Key Procedural Decisions**

- 1.4.4. On 11 October 2018, the ExA wrote to all IPs, SPs and OPs under Rule 8 of the EPR formalising the Examination timetable and setting out the Procedural Decisions in respect to the Examination [PD-006a].
- 1.4.5. During the Examination, the ExA issued further Procedural Decisions as follows:
- On 30 November 2018 to accept the removal of Stage 0 of the Proposed Development as a non-material change to the Application [PD-009];
  - on 27 November 2018 to find that the change in the Application to include additional land for CA of freehold amounts to a material change to the Application, but not so material to warrant a new Application [PD-008];
  - on 6 December 2018 to accept the inclusion of additional land for CA of freehold as a material change into the Examination; conveyed orally at the Compulsory Acquisition Hearing (CAH) [EV-015] and confirmed in writing on 7 December 2018 [PD-010]; and
  - on 15 January 2019 to accept design amendments to some of the buildings (referred to henceforth as the 'design amendment'), including to the battery storage design, the construction timetable of

the battery storage facility, the buffer around Dickon Field Drain and the new culvert, and the Power Station Site parameters, as a non-material change to the application [PD-015].

## Site Inspections

- 1.4.6. To ensure that the ExA had an adequate understanding of the Proposed Development within its site and surroundings, we held the following site inspections:
- An Unaccompanied Site Inspection (USI) on 3 October 2018 [EV-004]; and
  - an Accompanied Site Inspection (ASI) on Tuesday 4 December [PD-007] organised by the Applicant, and attended by NYCC, SDC and Mr May, Mr Peakin and Mr Greenwood. The itinerary for the ASI was published at Deadline (D)2 [REP2-034].

## Hearing Processes

- 1.4.7. The ExA decided to hold an OFH (OFH1) at the outset of the Examination on 4 October 2018, owing to the 306 RRs (of total 323 received) citing a principal common concern regarding the effects of the Proposed Development on climate change. The purpose of this Hearing was to give IPs an opportunity to be heard at an OFH on the matters raised in RRs, and for the ExA to identify the main concerns and how to examine them through the Hearing and written process. The digital audio recording of OFH1 [EV-005] was placed on the Inspectorate's website.
- 1.4.8. The ExA held further hearings under s91, s92 and s93 of PA2008 to ensure the thorough examination of the issues raised by the Application. All were held at Goole Leisure Centre. They were as follows:
- The requests for a second OFH were made by two registered IPs, Biofuelwatch and Friends of the Earth (FofE), which was held on 5 December 2018 (OFH2). The ExA was also made aware in advance that Biofuelwatch was intending to conduct a protest on the day of the OFH. The protest, along with some media coverage continued reasonably outside the venue, in a manner that did not disrupt the smooth running of the Hearing. It did not prevent the ExA from focusing on the arguments and did not prevent any other party from making their case. The agenda [EV-007] and the digital audio recording of the proceedings [EV-009] was published on the Inspectorate website;
  - an Issue Specific Hearing (ISH) was held on 5 December 2018 to discuss Environmental Matters (ISH1), including effects on climate change, landscape and design, biodiversity, and air quality. The agenda [EV-008] and the digital audio recording of the proceedings [EV-010], [EV-011], [EV-012] and [EV-013] was published on the Inspectorate website;
  - an ISH (ISH2) was held on 6 December 2018 to discuss the draft Development Consent Order (draft DCO). The agenda [EV-008] and the digital audio recording of the proceedings [EV-014] was published on the Inspectorate website; and

- a CAH (CAH1) was held on 6 December 2018 where APs were provided with an opportunity to be heard. The ExA examined the Applicant's case for CA and TP in the round. The agenda [EV-008] and the digital audio recording of the proceedings [EV-015] was published on the Inspectorate's website.

1.4.9. Hearing action points lists arising from the OFH2, ISH1 and ISH2 and CAH1 are available on the Inspectorate's website [EV-016] and [EV-022].

1.4.10. The Applicant made an application to amend its request for CA of land within the Order Limits [REP2-039]. No requests were made by any APs for any further CAH. However, the ExA decided to hold a second CAH (CAH2) on Tuesday 12 February 2019 [EV-018], having regard to Regulation 15(2) of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations), and to ensure that the additional APs and any additional IPs had opportunity to make oral representation should they wish to do so on this matter. For similar reasons, the ExA also held an ISH on Environmental Matters (ISH3) [EV-020] and [EV-021], and an OFH (OFH3) [EV-019] on the same day. All hearings were held at Goole Leisure Centre.

**Table 1.1: Hearings held**

Hearing Ref	Date Held	EL Reference
OFH1	4 October 2018	Audio [EV-005]
OFH2	5 December 2018	Agenda [EV-007] Audio [EV-009]
ISH1 - Environmental Matters	5 December 2018	Agenda [EV-008] Audio [EV-010, EV-011, EV-012, EV-013]
ISH2 - Draft DCO	6 December 2018	Agenda [EV-008] Audio [EV-014]
CAH1	6 December 2018	Agenda [EV-008] Audio [EV-015]
CAH2	12 February 2019	Audio [EV-018]
OFH3	12 February 2019	Audio [EV-019]
ISH3 – Environmental Matters	12 February 2019	Agenda [EV-017] Audio [EV-019]

## Written Processes

1.4.11. Examination under PA2008 is primarily a written process, in which the ExA has regard to written material forming the Application and arising

from the Examination. These documents are recorded in the Examination Library (EL) which can be found at Appendix B of this Report and published online. Document references in this report are enclosed in square brackets (e.g. [REP1-xxx]) and Appendix B contains links to the published documents. For this reason, this Report does not contain extensive summaries of all documents and representations, although we have had full regard to them in our conclusions. We have considered all important and relevant matters raised and key written sources are set out further below.

### **Relevant Representations**

- 1.4.12. 320 RRs were received by the Inspectorate [RR-001] to [RR-320] by the close of the registration of IPs on 29 August 2018. All persons that submitted RRs received the Rule 6 Letter [PD-006] and were provided with an opportunity to become involved in the Examination as IPs.
- 1.4.13. As referred to above, following a request by the Applicant to amend its request for CA of land within the Order Limits [REP2-039], the ExA made a Procedural Decision on 7 December 2018 [PD-010] to accept the proposed provision, subject to the subsequent fulfilment of duties under Regulations 7, 8 and 9 of the CA Regulations.
- 1.4.14. In line with Regulation 7, notice was provided of a consultation period on the proposed provision; this expired on 15 January 2019. While primarily directed at APs only, the ExA also decided to accept representations from existing IPs. At the close of the consultation period three responses [RR-321], [RR-322] and [RR323] were received from IPs only, and these were treated as additional RRs pursuant to Regulation 10 of the CA Regulations.
- 1.4.15. Of the 323 RRs received (320 RRs arising from the original notice and publicity for the submitted application and 3 RRs arising from notice and publicity under the CA Regulations), 306 raised an objection to the Proposed Development on the grounds that it was not compatible with a transition to a low-carbon future and it was inconsistent with the climate goals subscribed to by the UK in the Paris Agreement, due to the significant net increase in greenhouse gas (GHG) emissions. The Paris Agreement itself is outlined in Chapter 3 of this Report, and we conclude against it in Chapter 7 of this Report. The objections also expressed concern with the proposed use of Natural Gas, due to the potential dependence on fracking and horizontal drilling to acquire Natural Gas, and the potential for methane leakage and associated GHG emissions. Other points raised in RRs were as follows:
- Biodiversity net gain;
  - landscape impacts;
  - use of the River Ouse and the Drax Jetty for river traffic;
  - traffic routing during construction;
  - CCS and Combined Heat and Power (CHP); and
  - CA and protective provisions.

- 1.4.16. The RRs are discussed in more detail in later sections in the report. All 323 RRs have been fully considered by the ExA during the Examination.

### **Other Persons**

- 1.4.17. The following persons who were not already IPs attended the ISH regarding Environmental Matters on 5 December 2018 [EV-010] [EV-011] [EV-012] and [EV-013]. They requested that the ExA should enable them to join the Examination. The ExA considered that they did not meet the tests of s102B of the PA2008 and as such could not become IPs at this stage of the Examination. However, we accepted their WR into the Examination at D4:

- Cath Kibbler [REP4-023]; and
- James Hewitt [REP4-023].

### **Written Representations and Other Examination Documents**

- 1.4.18. The Applicant, IPs and OPs were provided [PD-006a] with opportunities, at various deadlines during the examination timetable, to:
- Make WRs;
  - comment on WRs made the Applicant and other IPs;
  - summarise their oral submissions at hearings in writing; and
  - comment on documents issued for consultation by the ExA including:
    - a Report on Implications for European Sites (RIES) [PD-017] published on 28 February 2019; and
    - the ExA's schedule of changes to the draft DCO [PD-016] published on 28 February 2019.
- 1.4.19. All WRs and other examination documents have been fully considered by the ExA.
- 1.4.20. A petition submitted by Biofuelwatch was sent directly to the SoS on the final day of the Examination. The petition was accepted into the Examination [AS-141]. However, while the Applicant has not had the opportunity to respond to it, the ExA notes that the details contained within only seek to repeat Biofuelwatch's earlier comments made in its submissions into the Examination; and as such all IPs would have had ample opportunity to respond. The ExA does therefore consider it necessary for the SoS to seek additional comments on it.

### **Local Impact Report**

- 1.4.21. Under s60 of the PA2008 the ExA requested Local Impact Reports (LIR) to outline the likely impact of the Proposed Development on the affected Local Authority's area. Combined LIR was received from NYCC and SDC [REP2-047].
- 1.4.22. The LIR has been taken fully into account by the ExA in all relevant Chapters of this Report.

## **Statements of Common Ground**

1.4.23. By the end of the Examination, the following bodies had concluded statements of common ground (SoCG) with the Applicant with no areas of disagreement:

- Highways England (HwE) [REP9-010];
- Environment Agency (EA) [REP9-009];
- Historic England (HE) [REP1-003];
- Natural England (NE) [REP1-004];
- East Riding of Yorkshire Council (ERYC) [REP1-005];
- Health and Safety Executive (HSE) [REP2-029];
- Selby Area Internal Drainage Board (Selby Area IDB) [REP3-018];  
and
- Newland Parish Council (NPC) [REP3-019].

1.4.24. By the end of the Examination, the following bodies had signed SoCGs with the Applicant with some areas of disagreement, which have been discussed in more detail later in the report:

- Yorkshire Wildlife Trust [REP8-009]; and
- NYCC and SDC [AS-136].

## **Written Questions**

1.4.25. The ExA asked two rounds of written questions.

- Written questions (WQs) [PD-006] were issued on 11 October 2018.
- further written questions (FWQs) [PD-016] were issued on 15 January 2019.

1.4.26. All responses to the ExAs WQs [PD-006] and FWQs [PD-014] have been fully considered in all relevant Chapters of this Report.

## **Requests for Further Information**

1.4.27. The following request(s) for further information and comments under Rule 17 of the EPR were issued as follows:

- On 27 November 2018, the ExA requested the Applicant provide further information in relation to the changes to the application for CA [PD-008];
- on 30 November 2018, the ExA requested the Applicant clarify what the application now constitutes (as a result of accepting the removal of Stage 0 as a non-material change to the application into the examination) [PD-009];
- on 21 December 2018, the ExA requested the Applicant provide further information in relation to the design amendment and the Power Station Site parameters [PD-012]; and
- on 14 March 2019, the ExA requested the Applicant provide further information in relation to the implications of granting consent for Unit X only [PD-018].

1.4.28. All responses to the above have been fully considered in all relevant Chapters of this Report.



## **Requests to Join and Leave the Examination**

- 1.4.29. As explained above, Cath Kibbler [REP4-023] and James Hewitt [REP4-023] submitted WRs at D4 which were accepted into the Examination at the discretion of the ExA. However, in line with the tests of s102B of the PA2008, the ExA concluded that both persons could not be IPs.
- 1.4.30. No persons wrote to the ExA to formally record the settlement of their issues and the withdrawal of their representations.

## **1.5. ENVIRONMENTAL IMPACT ASSESSMENT**

- 1.5.1. On 13 September 2017, the Applicant submitted a request for a Scoping Opinion to the Inspectorate under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [APP-087]. The Applicant also notified the SoS under Regulation 8(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Proposed Development.
- 1.5.2. On 23 October 2017 the Inspectorate provided a Scoping Opinion [APP-088]. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be Environmental Impact Assessment (EIA) development, and the Application was accompanied by an ES [APP-069] to [APP-131].
- 1.5.3. Consideration is given to the adequacy of the ES and matters arising from it in Chapters 4, 5 and 6 of this Report.

## **1.6. HABITATS REGULATIONS ASSESSMENT**

- 1.6.1. The Proposed Development is development for which a Habitats Assessment Regulations (HRA) report has been provided.
- 1.6.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Chapter 6 of this Report.

## **1.7. OTHER CONSENTS**

- 1.7.1. In addition to the consents required under PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. As set out by the Applicant in the Other Consents and Licences [APP-068], subsequently updated at D2 [REP2-020] and D3 [REP3-016], the following consents, licences and permits would be required:
- Environmental Permit (EP) from the EA, under the Environmental Permitting (England and Wales) Regulations 2016 (EP Regulations), is required for the operation of Unit X and Unit Y;
  - Greenhouse Gas Permit from the EA, under Greenhouse Gas Emissions Trading Scheme Regulations 2012, is required in relation

to the emission of carbon dioxide associated with the Proposed Development;

- Hazardous Substances Consent (HSC) from SDC, under the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 2015, may be required for AGI and storage of hazardous materials in relation to Unit X and Unit Y;
- Gas Transporter Licence from the Office of Gas and Electricity Markets (Ofgem), under the Gas Act 1986, required for gas pipeline;
- Generators Licence from Ofgem, under the Electricity Act 1989, required for electricity generation under the Proposed Development;
- Fire Notice from the Local fire and rescue authority (the HSE), under the Regulatory Reform (Fire Safety) Order 2005 is required in respect of work on construction sites;
- Permit for Transport of Abnormal Loads, Road Vehicles (Authorisation of Special Types) (General) Order 2003 or with authorisation from the SoS under the Road Traffic Act 1988, from the Vehicle Certification Agency (VCA); SoS under the Road Traffic Act 1988; Department for Transport; HE; local highway authority NYCC; and / or the police and bridge owners (if any) as appropriate. Only if required and to the extent not included in the Order;
- Building Regulations Approval from SDC, under the Building Regulations 2000 (as amended), required in respect of buildings and structures forming part of the Proposed Development;
- Licence from NE, under the Protection of Badgers Act 1992 required for any components of the Proposed Development that will require the closure of a badger sett; consent to close badger setts as required;
- Land Drainage Consent from Local lead drainage authority / Selby Area IDB or EA, under the Land Drainage Act 1991 (prohibition on obstructions etc. in watercourses), required for temporary or permanent works located within 7 m of top of bank of Selby Area IDB watercourse, only if and to the extent not covered by the Order);
- S61 Construction Noise Consent from SDC, under the Control of Pollution Act 1974, may be required during the construction of the Proposed Development for certain activities;
- Bilateral Connection Agreement and construction agreement for connection to the national electricity transmission system (NETS) at the existing NG 400 kilovolt substation for the export of electricity from the Site, from National Grid Electricity Transmission plc (NGET), required for the connection of each of Unit X and Unit Y to the existing NGET 400kV substation;
- Planning Permission from SDC under the Town and Country Planning Act 1990 (as amended) (TCPA1990) required for the Site Reconfiguration Works (herein referred to as the Stage 0 Works); planning consent granted 2018/0154/FULM;
- Surface Water Abstraction Licence (temporary works) from EA and Selby Area IDB, required for groundwater abstractions from temporary excavations or trenches only to the extent not covered by the Order;
- Standard Rules Environmental Permits from EA, may be required for certain elements during construction, e.g. temporary discharges to

water courses, waste management activities including the storage of demolition or construction waste;

- Planning and Advanced Reservation of Capacity Agreement (PARCA) from National Grid Gas plc (NGG), already completed for Unit X and will be completed for Unit Y when Drax takes the final investment decision for Unit Y;
- NTS Connection Application from NGG;
- Pipeline Safety Notification from HSE, under the Pipeline Safety Regulations 1996, required in connection with the proposed gas connection; other HSE-related notifications / consents may also be required;
- Flood Risk Activity Permit from EA, under the EP Regulations may be required in respect of temporary structures or stockpiles of materials within the floodplain only to the extent not covered by the Order; and
- Temporary Dewatering Consents from EA and Selby Area IDB, under the Land Drainage Act 1991 may be required for de-watering in association with construction phase only to the extent not covered by the Order.

1.7.2. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoS grant the Application.

## 1.8. STRUCTURE OF THIS REPORT

1.8.1. The structure of this report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and make this Report.
- **Chapter 2** describes the site and its surrounds, the Proposed Development, its planning history and that of related projects.
- **Chapter 3** records the legal and policy context for the SoS' decision.
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination.
- **Chapter 5** sets out the discussion under individual planning issues and records the important issues that were examined and the ExA's conclusion.
- **Chapter 6** considers effects on European Sites and Habitats Regulations Assessment (HRA).
- **Chapter 7** sets out the balance of planning considerations arising from Chapters 5 and 6, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 8** sets out the ExA's assessment for an Alternative Recommended DCO should the SoS determine to consent for Unit X only.
- **Chapter 9** sets out the ExA's examination of CA and TP proposals.
- **Chapter 10** considers the implications of the matters arising from the preceding chapters for the DCO.

- **Chapter 11** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.8.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events
- **Appendix B** – the Examination Library
- **Appendix C** – the List of Abbreviations
- **Appendix D** – the Recommended DCO for the Proposed Development
- **Appendix E** – the Alternative Recommended DCO for Unit X only

## **2. THE PROPOSAL AND THE SITE**

### **2.1. THE APPLICATION AS MADE**

2.1.1. The Application documents submitted are:

- Cover letter, application form and associated documents [APP-001] to [APP-006];
- application drawings [APP-007] to [APP-019];
- draft DCO [APP-020] and Explanatory Memorandum (EM) [APP-021];
- CA Schedule and associated documents [APP-022] to [APP-025];
- consultation reports and appendices [APP-026] to [APP-061];
- supporting technical statements [APP-062] to [APP-068];
- ES Volume 1 – main chapters [APP-069] to [APP-086];
- ES Volume 2 – appendices [APP-087] to [APP-130];
- ES Volume 3 – Non-Technical Summary [APP-131];
- Other supporting documents [APP-132], [APP-136], [APP-137];
- Outline Construction Environmental Management Plan (CEMP) [APP-133];
- HRA report [APP-134];
- Outline LBS [APP-135]; and
- proposed Heads of Terms for a Development Consent Obligation [APP-138].

2.1.2. The Applicant, Drax Power Limited, has applied to repower up to two existing coal-powered generating units (Units 5 and 6) at the existing Drax Power Station complex, with new gas turbines (Unit X and Unit Y) that can operate in both combined cycle and open cycle modes. The Applicant has used the word 'repower' to highlight the proposed re-utilisation of the existing infrastructure, such as the steam turbine and cooling towers that are currently used for the coal fired units, for the new gas fired generating units/stations in the Proposed Development.

2.1.3. The Proposed Development would also consist of a natural GRF, an AGI, a CCS readiness reserve space, an underground gas pipeline connection and a temporary construction laydown areas and car parking.

2.1.4. The Applicant proposes that the repowered gas fired generating stations would have a new combined capacity of up to 3,600MW in combined cycle mode (up to 1,800MW each), replacing existing units with a combined capacity to generate up to 1,320MW (660MW each).

2.1.5. Each of Unit X and Unit Y would have (subject to technology and commercial considerations) a battery storage facility with a capacity of up to 100MW per unit, resulting in a combined battery storage capacity of up to 200MW. The two battery storage facilities would be housed in a single building.

2.1.6. The Proposed Development is described in Schedule 1 'Authorised Development' of the Recommended DCO attached to this Report at Appendix D; within ES Chapter 3 [APP-071] updated at D6 [REP6-003], and the Works Plans (final submitted version) [REP4-003].

## **Application Site Area**

- 2.1.7. The Application site comprises the land identified within the Order Limits as shown on the Works Plans (final submitted version) [REP4-003]. This includes the existing 46 hectares (ha) Drax Power Station compound. The Order Land as shown on the Land Plans (final submitted version) [REP5-004] aligns exactly with the Order Limits.
- 2.1.8. Site Reconfiguration Works, which were originally included in the DCO Application, are now in the process of being implemented under a separate application consented under the TCPA1990 (2018/0154/FULM) and have been removed from the DCO Application before the SoS. These works have been removed from the Application under a non-material amendment application [REP2-003].
- 2.1.9. Land has been identified for the installation of CCS that can accommodate both Unit X and Unit Y, connection corridors for exhaust gas ductwork and for the rerouting of two existing public rights of way (PRoW) to provide a landscape mitigation. Construction works and vegetation clearance associated with CCS readiness is not included in the Proposed Development.
- 2.1.10. The connection between Unit X and Unit Y, and the NETS would comprise a new gas pipeline approximately 3km in length extending eastwards from the Power Station Site with a diameter of up to 600 mm nominal bore. The gas pipeline would begin south of the River Ouse, then into a new AGI south of Rusholme Lane. The gas pipeline continues north and west crossing first Rusholme Lane and then a stream, before continuing up to Main Road. The route turns north-west, then south, and then west, and connects to a new GRF east of New Road. The works are as follows.

## **Electricity Generating Stations**

- 2.1.11. Work Nos 1 and 2, as identified in Schedule 1 of the Recommended DCO [REP9-004] and in the Works Plans (final version) [REP4-003], are for up to two new gas turbine generating stations. Work No 1 would be for Unit X and Work No 2 for Unit Y. The units would be fuelled by natural gas, to generate gross electrical installed capacity of up to 1,800MW. Each of Unit X and Unit Y would comprise:
- Gas generating units including up to two gas turbines; one turbine hall building; up to two heat steam recovery generators (HSRG), generator buildings and up to two exhaust gas emission flue stacks, up to two bypass stacks, transformers, gas turbine air inlet filter house, power control centre, feed water pump house building, water supply, storage tanks and pipelines, emergency diesel generator and diesel fuel tank, switch gear and ancillary equipment, up to two turbine outage store buildings, 400kV electrical underground cables and telemetry and electrical protection auxiliary cabling, and a new main fuel gas station;
  - a new main pipe, piling for foundations, and modifications to the existing steam turbine generating plant and turbine hall building;

- a new underground gas pipeline across New Road; and
- works connecting to existing equipment and utilities, ground raising, and ground preparation works, site lighting infrastructure, roadways, parking, drainage, waste management infrastructure, electricity water, wastewater and telecommunications and other services, hard and soft landscaping, and fencing and other boundary treatments.

## **Two Battery Storage Facilities**

- 2.1.12. Work No 3 in the Works Plans [REP4-003], is for two battery storage facilities to be connected with both generating units. The ES [REP6-003] states that the battery energy storage facility would support Unit X and Unit Y in providing fast and flexible electricity export and other ancillary services to the NETS.
- 2.1.13. The battery energy storage facility for each of Unit X and Unit Y would be enclosed or protected by a structure such as a shield or cladding [REP5-007], which would be built in two phases, as the battery storage cells are installed.
- 2.1.14. Apart from the battery storage cells and the protective structure, the battery storage facilities would include transformers, switch gear and ancillary equipment, electrical underground cable, ground raising and preparation works, a flood mitigation channel, site lighting infrastructure, and hard and soft landscaping, ecological mitigation and other boundary treatments.

## **Gas Insulated Switchgear Banking Buildings**

- 2.1.15. Work No 4 in the Works Plans [REP4-003], proposes that each of Unit X and Unit Y and their battery energy storage facility would be connected to the existing National Grid 400 kV substation. The output from each generating unit would be banked using GIS housed in a new building close to the generating units.
- 2.1.16. Connection from the GIS banking building to the existing National Grid 400kV substation would be by underground cable for Unit X, and by either an underground cable or a combination of an underground cable and overhead conductors for Unit Y.

## **Natural Gas Receiving Facility Compound**

- 2.1.17. Work No 5 in the Works Plans [REP4-003], proposes a natural GRF compound to be installed on arable land to the east of New Road to receive the natural gas from the gas pipeline.
- 2.1.18. The GRF would include pipeline inspection gauge (PIG) trap receiving equipment, isolation valves, inline valves, metering, heat exchangers, filtering, pressure regulation equipment, pipework; electricity supply kiosks and associated cabling, emergency generator, electrical pre-heaters and electrical compressors housed in a building, control and instrumentation kiosk(s) and associated wiring, and a new underground gas pipeline.

- 2.1.19. The GRF compound would be accessed from New Road through a new permanent access. Further works required would include signing and road markings, drainage, car parking, security infrastructure, lighting, external cooling system and fencing. Landscape and biodiversity mitigation is also proposed in this land parcel, as described in the Outline LBS (final version) [REP9-008].
- 2.1.20. The ES [REP6-003] states that the gas fired boilers would have a total installed capacity of approximately 7,200MW thermal input and would operate only in cold conditions. It is proposed that emissions would be through two pairs to two (total four) flue stacks. There would also be two electrically powered pre-heaters and electrically powered compressors.

### **Above Ground Gas Installation**

- 2.1.21. Work No 6 proposes two AGIs to be located on land to the south of Rusholme Lane, within close proximity to an existing NGG gas feeder line. There would be a PIG facility. The ES [REP6-003] states that the PIG trap launching station would be operated by Drax, and a minimum offtake connection would be operated by NGG.
- 2.1.22. The compounds would comprise of remotely operable valves, control and instrumentation kiosk(s), pipework and electrical supply kiosk, and an underground gas pipeline.
- 2.1.23. The proposed site drainage would create a new outfall to Dickon Field Drain, and a new culvert. Also proposed is creation of a permanent access from Rusholme Lane, permanent access into the field to the south of Dickon Field Drain, and creation of a culvert on Dickon Field Drain. Further works would include creating of road surfacing, car parking, security infrastructure, electricity and telecommunications connections and other services, drainage, landscaping, ecological mitigation and fencing treatments.
- 2.1.24. There would be a temporary construction laydown area and the creation of up to two construction access routes from Rusholme Lane.

### **Gas Pipeline**

- 2.1.25. Work No 7 proposes an underground gas pipeline connection and telemetry cabling to connect the proposed Unit X and Unit Y to the NETS. The proposed gas pipeline would be approximately 3km in length and up to 600mm nominal diameter. The route of the proposed gas pipeline would be marked using field marker posts and cathodic protection test / transformer rectifier units.
- 2.1.26. The ES [REP6-003] states that the gas pipeline would be constructed using primarily open cut construction techniques, and for areas containing constraints, such as roads and drainage ditches, Drax would use trenchless crossing techniques. The proposed pipeline area in the Application includes sufficient land for both the area in which the gas pipeline would be installed, and a working width. The proposed gas pipeline would be routed away from significant hedgerows and



established trees, wherever possible. Pre-construction land drainage schemes would be installed, and these would be inspected at the detailed design stage. An appropriate method of permanent reinstatement would be devised and agreed with the APs.

- 2.1.27. The ES [REP6-003] states that following the construction of the gas pipeline, agricultural activities can continue above the gas pipeline. However, there would be some restrictions surrounding activities including deep ploughing and the planting of trees.

## **Electrical Connections**

- 2.1.28. Work No 8 proposes works within the existing 400kV NGET switchyard to accommodate the new connections, including the installation of electrical underground cables and cable sealing ends, insulated switchgear and overhead busbars, and associated trenching, drainage, landscaping and ecological mitigation works.
- 2.1.29. These works may be undertaken by NGET, or by the Applicant by agreement with NGET and are therefore included as part of the Proposed Development. If additional works are required outside the limit of the Recommended DCO (such as reinforcement works at remote substations and/or re-stringing of existing overhead power lines during construction), these works would be led by NGET.

## **Temporary Construction Laydown Areas**

- 2.1.30. Work No 9 proposes land to be used during construction for the temporary locating of construction offices, warehouses, workshops, open air storage areas and car parking. The ES [REP6-003] states that the areas would be reinstated to their original use.
- 2.1.31. The land associated with Work No 9 is divided into two areas. Work No 9A, as shown on the Works Plans (final version) [REP5-004] lies predominately within the existing Power Station Site. Work 9B lies on the eastern side of New Road and outside of the Power Station Site. To avoid staff crossing this road on foot, the Proposed Development includes the provision of a temporary pedestrian bridge. Footpaths that bisect construction areas would not require to be closed during construction; they would remain operational and be protected by fencing.
- 2.1.32. Following construction, the land which forms Work No 9A as shown on the Works Plans [REP5-004] would be safeguarded for CCS readiness.
- 2.1.33. For the construction of the gas pipeline, temporary contractors' compounds and a pipe storage yard would be provided and are likely to be located at the start of the gas pipeline off Rusholme Lane. A passing place would be provided on land to the side of Rusholme Lane, which is the subject of a separate Work No 14.
- 2.1.34. For the construction of the AGI, there would be one construction laydown for NGG and one for the Applicant with a shared temporary construction access road off Rusholme Lane.

## **Carbon Capture Storage Readiness**

- 2.1.35. Work No 10 proposes an area of land to be designated for CCS readiness. This is shown as Work No 10A on the Works Plans [REP5-004] and comprises land within and to the north of the existing Power Station Site, and land to the east on the other side of New Road; this land also forming Work No 9B. In addition, land has also been identified for connection corridors for exhaust gas ductwork, for the rerouting of two existing PRow, and to provide a landscape mitigation.
- 2.1.36. The ES [REP6-003] clarifies that the Recommended DCO does not consent any construction works associated with CCS readiness. The Applicant will apply for a separate consent for a carbon capture facility.

## **Landscaping**

- 2.1.37. Work No 11 proposes retained and enhanced landscaping works and ecological mitigation, as described in the ES Chapter 9 [APP-077] and Chapter 10 Landscape and Visual Amenity [APP-078], and the Outline LBS [REP9-008].

## **Sludge Lagoons**

- 2.1.38. Work No 12 proposes, for Unit X, to decommission and demolish one existing sludge lagoon, and reinstate one existing out of service sludge lagoon.
- 2.1.39. If Unit Y is developed, all existing sludge lagoons to the east of the northern cooling towers would be decommissioned and filled in. Up to two new lagoons would be built, along with associated bund walls, underground pipework, valves and sluices, and access roads.

## **Removal of Existing OHL, Pylons and Foundations**

- 2.1.40. Work No 13 proposes to remove two existing 132kV pylons on the Power Station Site and de-string the adjacent pylons in order to accommodate the new infrastructure.

## **Passing Place on Rusholme Lane**

- 2.1.41. Work No 14 proposes a temporary passing place on land to the side of Rusholme Lane to facilitate construction vehicles in respect to the construction of Work No 7 (gas pipeline).

## **Associated Development**

- 2.1.42. S115 of the PA2008 states that development consent may be granted for development for which development consent is required, or associated development. The Applicant states in the Application Cover Letter [APP-001] and in the EM [APP-021], final version submitted at D9 [REP9-006], that Works Nos 1 (Unit X), 2 (Unit Y) and 3 (battery storage) are NSIPs. Works Nos 4 through to 14 would fall within s115(a) of the PA2008 as

associated development. Schedule 1 of the Recommended DCO sets these out in detail under each Work No.

2.1.43. The EM [REP9-006] identifies further associated development in connection with the numbered works such as drainage systems, services and utilities connections, landscaping, security measures including means of enclosure, lighting, site clearance, temporary construction laydown and contractor facilities, and tunnelling, boring and drilling works.

2.1.44. The Applicant states [REP9-006] that the associated development has been assessed against the document entitled "DCLG Guidance on associated development applications for major infrastructure projects" (April 2013) and that such Works are clearly capable of being granted development consent by the SoS pursuant to s115 of the PA2008. This is because such works are:

- Directly associated with the NSIPs, as they are all required for the construction, operation or maintenance of the generating stations, or to mitigate their impacts;
- subordinate in nature, none of them are an aim in themselves;
- proportionate to the nature and scale of the NSIPs; and
- of a nature which is typically brought forward alongside a gas-fired generating station and a battery energy storage facility.

2.1.45. The ExA does not agree that Work No 3 (battery storage) is an NSIP. We discuss this further in Section 3.2 of Chapter 3 of this Report.

## Construction Programme

2.1.46. The ES [APP-069] to [APP-086] and [REP6-003] has assessed the Proposed Development in five stages (Stages 0 to 4). Stage 0 is the Site Reconfiguration Works, which have since been removed from the DCO Application because such works have been consented by SDC under TCPA1990 (as amended). Table 2.1 below sets out the stages of development.

**Table 2.1: ES Stages of the Proposed Development**

Stage	Description	Work Nos
1	Construction of Unit X	1 (Unit X) 3A (Battery Storage Unit X) 4A (GIS Unit X) 5 (NGRF) 6 (AGI) 7 (Gas Pipeline) 8A (Unit X Electrical Connections)

Stage	Description	Work Nos
		9 (Construction Laydown) 11 (Landscaping) 12A (Sludge Lagoons Unit X) 13 (Removal of 132KV Line) 14 (Temporary Passing at Rusholme Lane)
2	Operation of Unit X Construction of Unit Y	2 (Unit Y) 3B (Battery Storage Unit Y) 4B (GIS Unit Y) 8B (Electrical Connections Unit Y) 9 (Construction Laydown) 11 (Landscaping) 12B (Sludge Lagoons Unit Y)
3	Operation of Units X and Y	None
4	Decommissioning	None

2.1.47. In respect of construction, the ES [REP6-003] states that Unit X would be constructed in Stage 1. Once Unit X is ready for connection into the steam turbine, one existing coal-fired unit (Unit 5) would be turned off. At this point, there would be one remaining coal-fired unit in operation.

2.1.48. If the Applicant decides to pursue Unit Y, it would be constructed during Stage 2. Once Unit Y is ready for connection into the steam turbine, the remaining coal-fired unit (Unit 6) would be turned off. At this point, there would no remaining coal-fired units in operation at the existing Drax Power Station complex.

2.1.49. The ES [REP6-003] states that each construction stage (i.e. Stages 1 and 2) would take approximately 34 months followed by commissioning. It is proposed that the two construction stages would be separated by up to a year. The overall programme would last at least 83 months. It is assumed that construction of Unit X would commence in 2019/2020 and be completed by 2022/2023. If Unit Y is built, the construction would likely commence in 2024 and be completed in 2027.

- 2.1.50. It is proposed in the ES [REP6-003] that the Work No 7 (gas pipeline) would be constructed within the first half of this programme (Stage 1). The battery storage facilities would be constructed in Stages 1 and 2 as each unit is repowered.

## **Operation**

- 2.1.51. Units X and Y would operate in Stage 3, although Unit X would operate in Stage 2 as Unit Y is being constructed. As the Applicant is reserving the option not to proceed with Unit Y, Stage 2 may consist of the operation of Unit X with no additional construction works. Subsequently, Stage 3 would be the operation of Unit X only.
- 2.1.52. The ES [REP6-003] states that the Proposed Development would allow flexibility to respond to the needs of the electricity market during its lifetime. If the plant is required as a base load plant, it would operate for a large proportion of the year, most likely in CCGT mode for maximum efficiency. However, the Proposed Development would also be capable of responding rapidly to increased demand to operate as a peaking plant. In this case, the battery units would provide immediate response, followed quickly by the gas units in OCGT mode.
- 2.1.53. The Proposed Development would be designed to operate 24 hours per day, seven days per week with planned and unplanned offline periods for maintenance.

## **Decommissioning**

- 2.1.54. The decommissioning impacts have been assessed in the ES [APP-069] to [APP-086] and [REP6-003]. The Proposed Development would be designed to operate for up to 25 years. If it is decided to decommission the plant, it is expected that most above ground structures would be removed, while the gas pipeline would remain in situ. The decommissioning phase, Stage 4 in the ES [REP6-003], is likely to take place over several months and in accordance with the requirement of the EP for the Proposed Development under the EP Regulations (or subsequent replacement legislation).

## **2.2. THE APPLICATION AS EXAMINED**

- 2.2.1. The documents submitted at the outset of the Application were updated through the Examination in response to WQs [PD-006] and FWQs [PD-014] as well as RRs and WRs, and private discussions between the Applicant and IPs. These changes are discussed below. The ExA accepts that updates and minor changes to submitted documents are an inevitability as discussions take place, questions are asked, and as circumstances evolve. The ExA examined all updated documents to ensure, amongst other things, that the resultant changes and updates did not materially or significantly alter the Proposed Development as made. The ExA is satisfied that all changes and updates discussed below did not significantly alter or amend the Application as a result.

## **Site Reconfiguration Works or Stage 0**

- 2.2.2. The Stage 0 Works refers to the operations necessary to prepare the Power Station Site for the construction of the generating station equipment and the electrical connection. The Stage 0 Works was the subject of a separate planning application under the TCPA1990 (planning reference 2018/0154/FULM), which was approved by SDC on 24 May 2018. Because the Applicant has commenced and implemented this consent, the Applicant sought, and the ExA accepted the removal of the Stage 0 Works from this Application [PD-009]. Stage 0 was originally assessed as a separate stage in the ES [APP-069] to [APP-086] but was removed by the non-material change request at D2 [REP2-003]. For the assessment of Stages 1, 2 and 3, it is assumed in the ES that Stage 0 has been completed and this applies to either scenario, whether approved through the DCO or the TCPA 1990 application.

## **Changes to Compulsory Acquisition**

- 2.2.3. At D2 [REP2-003], [REP2-038], [REP2-039] and [REP2-040], the Applicant submitted a request to amend the CA of land. The ExA made a Procedural Decision on Thursday 6 December 2018 to accept the proposed change into the Examination and reminded the Applicant of its duties under requirements under Regulation 7, 8 and 9 under the CA Regulations. The Procedural Decision was conveyed orally at the CAH1 held on the same day [EV-015] and confirmed in writing on 7 December 2018 [PD-010]. As required by Regulation 15(2) of the CA Regulations, the ExA held the CAH2 on Tuesday 12 February 2019 [EV-018]. No APs or IPs raised any concerns or comments in respect to the additional land request. The corresponding Land Plans and SoR were submitted at D2 [REP2-006] [REP2-038] and [REP2-040]. This is discussed further in Chapter 9 of this Report.

## **Design Changes**

- 2.2.4. The Applicant submitted a request to the ExA with its D3 submissions [REP3-001] and [REP3-022] to accept a number of proposed design changes. These changes were discussed at the ISH1 on Environmental Matters held on 5 December 2018 [EV-010] to [EV-013].
- 2.2.5. The Applicant states [REP3-022] that its reasons for the proposed design changes were to allow the Proposed Development to respond to technological improvements, to update the AGI layout configuration in discussion with NGET, and to respond to new information on the existing site topography which allowed a more refined height above ordnance datum (AOD) to be determined for the stacks and steam generators.
- 2.2.6. The ExA issued a Procedural Decision [PD-015] on 15 January 2019 stating that the proposed changes to the Application did not raise new or different likely significant environmental effects and was non-material. The proposed changes were accepted for consideration in the Examination as part of the Application. The Applicant subsequently submitted an updated 'Chapter 3 Site and Project Description' of the ES [REP6-003] at the request of the ExA, to reflect the removal of Stage 0

and the proposed design changes. An updated HRA report [REP6-006] was also provided at D6 to reflect the proposed design changes. This is discussed further in Chapter 6 to this Report.

## **Unit X Only Consent**

2.2.7. The ExA issued a Rule 17 letter [PD-018] on 15 March 2019 to explore the implications, if any, should the SoS consider that consent be given only for Unit X and associated infrastructure. This is discussed further in Chapter 8 of this Report. The Applicant provided the following documents which comprised its response:

- Covering letter [REP9-016];
- implication of a decision granting consent for Unit X only, including an analysis which concludes that the ES adequately assesses the effects of Unit X alone [REP9-017];
- reference to Applicant's response to WQ ANC1.12 [REP2-035] which provides information to assess the GHG emissions from Unit X on its own; and
- draft DCO relating to Unit X only [REP9-018] and comparison against the final draft DCO [REP9-021].

## **Updated Documents during the Examination**

2.2.8. For the remainder of the Report, references to the ES means:

- The documents submitted at the outset of the Application [APP-069] to [APP-131] and discussed above;
- the supplemental environmental and engineering information submitted during the Examination; and
- the updated documents submitted during the Examination.

2.2.9. The supplemental environmental and engineering information refers to those documents which are identified in Paragraph 8.1.1 and Table 5 of the Application Guide [REP9-003].

2.2.10. The updated documents to the ES comprise the following:

- Errata Sheet to Chapters 7, 8 and 11 submitted at D1 [REP1-008];
- Chapter 3 'Site and Project Description', revised to reflect non-material changes, submitted at D6 [REP6-003];
- Volume 2 Appendix 5.1 the Outline Construction Worker Travel Plan (CWTP) was updated at D2 [REP2-021] and finally at D4 [REP4-013];
- Volume 2 Appendix 5.2 the Outline Construction Traffic Management Plan (CTMP) was updated at D2 [REP2-022] and finally at D4 [REP4-014]; and
- Volume 2 Appendix 9.10 the Biodiversity Net Gain (BNG) Assessment updated at D2 [REP2-023]; at D6 [REP6-004] at D9 [REP9-007] and on the final day of the Examination [AS-129].

2.2.11. The changes to the ES outline above occurred as a result of the non-material amendments to the Proposed Development discussed above, and through the Applicant's responses to RRs, WRs, WQs [PD-006] and

FWQs [PD-014]. We examined such changes and considered that the updates to the ES are non-material.

- 2.2.12. Other documents and drawings were updated regularly throughout the Examination to reflect ongoing negotiations with stakeholders, to clarify and address issues raised during the Examination, and to take on board detailed developments as they emerged. The final versions of those other changed and updated documents are set out in the final version of the Application Guide submitted at D9 [REP9-003].
- 2.2.13. At D9, the Applicant submitted documents in the event the SoS decides to grant consent for Unit X only. These documents were submitted at the request of the ExA [PD-018]. They do not replace or update those listed above for the Proposed Development, and should be read as amendments to the submitted documents in the event the SoS is minded to consent Unit X only:
- Draft DCO [REP9-018] and comparison against final draft DCO for the Proposed Development [REP9-021];
  - BoR [REP9-019]; and
  - Land Plans [REP9-020].

## **2.3. SITE DESCRIPTION**

- 2.3.1. Drax Power Station is a large power station comprising originally of six coal-fired units. The Planning Statement [APP-062] states that it was originally built, owned and operated by the Central Electricity Generating Board and had a capacity of just under 2,000MW when Phase 1 was completed in 1975. Its current capacity is 4,000MW after the construction of Phase 2 in 1986.
- 2.3.2. Four of the original six coal-fired units are now converted to biomass, as confirmed by the Applicant in response to WQ ANC 1.1 [REP2-035], leaving only Units 5 and 6, which are the subject of this Application, running on coal. The Power Station Site contains large-scale buildings and infrastructure spread over a near 79-ha area of land.
- 2.3.3. The Planning Statement [APP-062] states, confirmed by our observations at the USI [EV-004], that Drax Power Station is primarily surrounded by open countryside comprising open grassland, scrub and agricultural land. The villages of Drax, Long Drax, Hemingbrough and Camblesforth lie within 1km of the site. Larger towns including Selby and Goole are approximately 5km and 7.5km distant respectively.
- 2.3.4. The land required for Works Nos 5 (GRF); 6 (gas pipeline) and 7 (AGI) is mainly in agricultural use and includes land classified as Grade I Excellent and Grade II Very Good in the Agricultural Land Classification's (ALC) high level dataset.
- 2.3.5. PRoWs run immediately adjacent to the western and northern borders of the Power Station Site. A PRoW network extends across much of the surrounding area with a high concentration between the village of Drax



and the River Ouse to the north. The Trans-Pennine Trail long distance path and Sustrans Route 65 run on the eastern bank of the River Ouse.

- 2.3.6. The road network adjacent to Drax Power Station and within the pipeline area includes the A1041 and the A645, which connects the site to the wider road network including the M62 (J36) approximately 6km to the south. Minor roads connect the site to the villages of Drax, Newland and isolated properties.
- 2.3.7. The nearest major surface water feature is the River Ouse, located approximately 1.5km north east of the Power Station Site. Approximately 3.5km downstream of the Power Station Site, the River Ouse is designated as part of the Humber Estuary Ramsar site, Special Area of Conservation (SAC), Special Protection Area (SPA) and Site of Special Scientific Interest (SSSI). The River Derwent is the closest SAC being approximately 700m to the north of the Power Station Site. The ES and HRA report [REP6-006] identified 10 European sites with 15km of the Proposed Development. There are various other sites designated for their biodiversity value within the area.
- 2.3.8. The Power Station Site and majority of its surrounds are located within groundwater Source Protection Zone (SPZ) 3 (total catchment). There are no geological SSSIs within the study area covered by Chapter 11 (Ground Conditions) of the ES [APP-079]. There are also no known Regionally Important Geological Sites (RIGS) within the ES study area.
- 2.3.9. The ES [APP-076] states that there are no world heritage sites, registered parks and gardens, historic battlefields or historic conservation areas within the Power Station Site or within 5km. There are four Scheduled Ancient Monuments within 2km of the Power Station Site, including Drax Augustinian Priory and Scurff Hall Moated Site; and two listed buildings within 500m of the Power Station Site, including the Grade I listed Church of St Peter and St Paul and the Grade II listed Cross base and shaft in the churchyard of St Peter and St Paul. There are a further 11 Grade II listed buildings within 1km of the Power Station Site, within the villages of Newland and Barmby on the Marsh.
- 2.3.10. The ES [APP-076] identifies non-designated heritage assets within 300m of the Power Station Site including monuments, buildings and find spots from various time periods, including early Iron Age, Roman, medieval, nineteenth and twentieth centuries. Drax Abbey Farm borders the site to the north. The ES [APP-076] and the Planning Statement [APP-062] identify the site and its surrounding area as being in National Character Area (NCA) Profile 39 Humberhead Levels which is described as an area with: *"big expansive skies, and vertical elements like water towers, power stations and wind turbines are very prominent"*. At county level, the site lies within the Farmed Lowland and Valley Landscape Primary Landscape Unit (PLU) which forms a belt running north south through North Yorkshire and is divided up into 11 Landscape Character Types (LCTs); four of which are of relevance to the Power Station Site and its surrounds.

- 2.3.11. The Power Station Site lies approximately 6km of the nearest Air Quality Management Area (AQMA) designated by SDC due to exceedances of the annual mean Nitrogen Dioxide (NO<sub>2</sub>) objective in Selby Town.

## **2.4. RELEVANT PLANNING HISTORY**

- 2.4.1. As stated above, Drax Power Station opened in 1975, generating electricity with three coal fired units and a total generating capacity of just under 2,000MW. In 1986 the Power Station was extended to develop a further three units and has since then operated six units.
- 2.4.2. Planning Permission was granted by the Department of Energy and Climate Change under s36 of the Electricity Act 1989 (2009/0694/GOV) to develop a 290MW biomass fuelled electricity generating station on 10 August 2011 for four of the six existing coal-fired units. Units 1 to 4 are all in biomass use; Unit 4 being the last to convert in August 2018.
- 2.4.3. The Applicant has previously considered an alternative development, which was the White Rose Carbon Capture Project (Application 2013/1186/HAZ was consented on 7 May 2014 under the Planning (Hazardous Substances) Act 1990 for the storage and use of substances) to the north of the Power Station Site. The Applicant also considered a new gas fired power station on land to the east of the Existing Drax Power Station Complex (no application was submitted). The Planning Statement [APP-062] states that these sites were not considered appropriate for the Proposed Development given the need to be near the steam turbines that are located at Units 5 and 6 for efficiency.
- 2.4.4. Other planning history for the site generally consists of planning decisions relating to the operation of Drax Power Station and for ancillary buildings, structures and infrastructure. The relevant planning history and planning permissions relating to the site and its surrounds are set out in within Table 1-1 in Appendix 1 of the Applicant's Planning Statement [APP-062].
- 2.4.5. As discussed above, the Applicant is carrying out the Stage 0 Works which were granted permission under the TCPA1990 (planning reference 2018/0154/FULM) by SDC on 24 May 2018. The Stage 0 Works are necessary to prepare the Power Station Site for the construction of the generating station equipment and the electrical connection.

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

#### **3.1. INTRODUCTION**

- 3.1.1. This Chapter sets out the relevant legal and policy context for the Application, which was considered and applied by the ExA in carrying out its Examination and in making its findings and recommendations to the SoS.
- 3.1.2. ES Chapter 2 [APP-070] and the Applicant's Planning Statement [APP-062] set out the policy position in relation to the Proposed Development. The documents include an assessment of the Proposed Development against the policy requirements of the National Policy Statements (NPS). Individual chapters of the ES provide specific background relating to topics particularly, and if relevant, on international obligations.
- 3.1.3. One LIR was received by the ExA from NYCC and SDC [REP2-047], and it sets out the local authorities' position on applicable development plan policies and other local strategies.

#### **3.2. THE PLANNING ACT 2008**

- 3.2.1. The PA2008 is the primary legislation concerning NSIPs. S14 defines what NSIPs are, with s14(1)(a) identifying the construction or extension of a generating station as an NSIP. S15(2) identifies the definition of a generating station as being within England, does not generate electricity from wind, is not an offshore generating station, and has a capacity of more than 50MW. The Applicant states [APP-001] that Work No 1 (Unit X) and Work No 2 (Unit Y) are NSIPs, thus subsequently defined by s14(1)(a) and s15(2) of the PA2008. The ExA agrees. Work Nos 4 through to 14 are to be considered as associated development, this is discussed in Chapter 2 of this Report. The ExA also agrees.
- 3.2.2. The Applicant also defines Work No 3 (battery storage) as an NSIP [APP-001] and [REP6-003]. This is because, it says:
- The battery storage units would generate 100MW each; and
  - it is the Government's, and Ofgem's intention for generating stations to include battery storage.
- 3.2.3. The first bullet point is accepted. On the latter matter, the Applicant states [APP-001] that Government and the energy industry have directed that energy storage facilities, which includes Work No 3 (battery storage) should be categorised as a subset of a generating station given the process of electricity storage, which involves generating rather than storage. This is because in order to convert the stored potential energy into energy that can be output to the grid, the potential energy must be regenerated, and it is this regeneration process that means the battery storage facility is a generating station. The Government confirmed this opinion in its call for evidence entitled 'A smart, flexible energy system' published by BEIS in November 2016, which states at paragraph 22 that a storage facility is a form of electricity generating station.

- 3.2.4. Notwithstanding, at the ISH2 on the draft DCO held on Thursday 6 December 2018 [EV-014], the ExA questioned whether Work No 3 (battery storage) should in fact be considered as associated development. While the ExA accepted that Work No 3 (battery storage) would generate more than 50MW as prescribed by s15 of the PA2008; NPS EN-1 is nevertheless silent on the matter, and s15 of the PA2008 does not specifically define battery storage as electricity generation.
- 3.2.5. In its response, the Applicant states, and confirmed in writing in its D4 submissions [REP4-011] that Work No 3 (battery storage) is a generating station and therefore an NSIP, because the facility delivers both active and reactive power and absorbs power. Thus, the Applicant states, it generates electricity alongside its facility to store it. The Applicant further states that if the SoS was to consider battery storage as associated development and as such go against their own advice, the Applicant could be prevented from building it out. It considered these were some of the reasons behind the Government commentary on the amendment to s15 of the PA2008.
- 3.2.6. The ExA acknowledges the Applicant's response, and that no IPs raised any concerns on this matter either during the pre-Examination or Examination periods. The ExA also has no reason to question the intention of the SoS to include battery storage as s14 generating station. However, at present this is only a policy position. S14 and s15 of the PA2008 have not been amended to specifically refer to battery storage as a generating station. Furthermore, none of the energy suite of NSIPs cover battery storage facilities. The weight of law therefore must direct the SoS to conclude that Work No 3 is associated development.
- 3.2.7. However, there is another reason which supports the ExA's conclusion that Work No 3 (battery storage) is associated development. Looking at the tests of whether development is associated development, the ExA refers to paragraph 5 of the DCLG Guidance document entitled "Guidance on associated development applications for major infrastructure projects" 2013 (Guidance 2013). This states that it is for the SoS to decide, on a case by case basis whether or not development should be treated as associated development. The SoS should be satisfied that:
- The associated development requires a direct relationship between associated development and the principal development;
  - it should not be an aim in itself but should be subordinate to the principal development;
  - that it is not as just as a source of additional revenue for the applicant; and
  - it should be proportionate to the nature and scale of the principal development.
- 3.2.8. Paragraph 3.2.17 of ES Chapter 3 [REP6-003] clears this up. It describes Work No 3 as: *"Each of Unit X and Unit Y would (subject to technology and commercial considerations) be connected to its own battery energy storage facility, which would support Unit X and Unit Y in providing fast and flexible electricity export and other ancillary services to the NTS."*

- 3.2.9. The ExA draws from the ES [REP6-003] that Work No 3 clearly falls within paragraph 5 of the Guidance 2013 tests as a subordinate and supportive source of power storage and supply, reliant on Units X and Y and which is incapable of independent operation.
- 3.2.10. Therefore, drawing on the two matters above in respect to the unamended s14 and s15 of the PA2008 and the shared characteristics of Work No 3 with paragraph 5 of the Guidance 2013 tests, the ExA concludes that Work No 3 (battery storage) must be considered to be associated development as defined by s115 of the PA2008, and is not an NSIP.
- 3.2.11. However, should the SoS agree with the Applicant and find that Work No 3 (battery storage) is an NSIP, the SoS will need to consider, in the absence of mention of battery storage within the energy suite of NPSs, whether s105 of the PA2008 is engaged. The SoS would then need to determine this element of the Proposed Development against s105 in the planning balance.
- 3.2.12. Whether the SoS considers battery storage as an NSIP, or as associated development, the SoS will be aware that battery storage is development which the Applicant seeks consent for, indeed the Recommended DCO lists battery storage as an individual Work No (Work No 3) and the Recommended DCO does not differentiate between 'essential' and 'other' works. The ES has assessed the Proposed Development including battery storage. More importantly, the ExA has examined the environmental effects of the Proposed Development, including battery storage, in Chapter 5 of this Report. Thus, the SoS can determine its acceptability on the strength of our Examination in this Report.
- 3.2.13. S104 of the PA2008 applies if an NPS has effect in relation to development of the description to which the application relates (a 'relevant NPS'). In such a case, the SoS would have to determine the Application in accordance with the relevant NPS.
- 3.2.14. S104 of PA2008 applies because the Proposed Development (excluding Work No 3 (battery storage)) is "*in relation to an application for an order granting development consent [where] a national policy statement has effect in relation to development of the description to which the application relates*".
- 3.2.15. S104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with PA2008. In summary, these are any relevant NPS, any LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.
- 3.2.16. S104(3) requires the SoS to decide the Application in accordance with any relevant NPSs, except to the extent that one or more of subsections 104(4) to (8). Details of the specific NPSs that apply to this project are set out below. As will become clear in Chapters 5, 6 and 7 of this Report, the ExA finds that s104(7) applies, and whether the Order is made turns

on the balance that needs to be applied. S104(7) requires the SoS to be satisfied that the adverse impacts of the Proposed Development would outweigh its benefits.

- 3.2.17. This Report sets out the ExA's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008.

### **3.3. NATIONAL POLICY STATEMENTS**

- 3.3.1. NPSs set out Government policy on different types of national infrastructure development. We consider that the energy suite of NPSs are relevant to this case, and comprise the following:

- EN-1: Overarching NPS for Energy;
- EN-2: Fossil Fuel and Electricity Generating Infrastructure;
- EN-4: Gas supply infrastructure and gas and oil pipelines; and
- EN-5: Electricity networks infrastructure.

- 3.3.2. The NPSs were designated by the SoS for Energy and Climate Change on 19 July 2011. Responsibility for energy now rests with the BEIS.

- 3.3.3. The NPSs form the primary policy context for this Examination. This Report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of PA2008. The purpose and broad content of these NPSs is summarised here. However, subject specific consideration of policy arising from them is provided where necessary in the remainder of this Report below, particularly within Chapter 5.

#### **EN-1: Overarching National Policy Statement for Energy**

- 3.3.4. NPS EN-1 (July 2011) sets out general principles and generic impacts to be considered in considering applications for energy NSIPs. All other energy NPSs sit under the policy framework provided by this NPS. It provides the primary basis for determining if development consent should be granted. All other energy NPSs are used together with this NPS. The overarching policy objectives that underpin NPS EN-1 include:

- Meeting the demand for energy generation in the United Kingdom (UK);
- transitioning to low carbon sources; and
- reducing greenhouse gas (GHG) emissions.

- 3.3.5. While NPS EN-1 is clear about the Government's commitment to transitioning to low carbon sources, and meeting the targets to reduce emissions, it also acknowledges the role the fossil fuels will continue to play in energy generation as the UK moves to meet these commitments. The need for projects to strike a balance in meeting the three overarching policy objectives is acknowledged throughout NPS EN-1.

3.3.6. Section 2 sets out the direction of travel for meeting the above-mentioned Government objectives on carbon emission reductions, energy security and affordability. The paragraphs of note are:

- Paragraph 2.2.1 states that *"We are committed to meeting our legally binding target to cut greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels."*
- paragraph 2.2.5 states that *"The UK economy is reliant on fossil fuels, and they are likely to play a significant role for some time to come."* Further on Paragraph 2.2.6 states *"However, the UK needs to wean itself off such a high carbon energy mix: to reduce greenhouse gas emissions, and to improve the security, availability and affordability of energy through diversification."*
- in paragraph 2.2.20, the NPS EN-1 makes a clear case for the continuing demand for electricity in the UK, stating *"It is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to a low carbon economy."*
- referring to the 2050 pathways analysis, paragraph 2.2.22 states that demand for electricity, could double demand over the next forty years. Later in paragraphs 2.2.22 and 2.2.23 it acknowledges that in order to meet emissions targets, the electricity being consumed will need to be almost exclusively from low carbon sources, and for this purpose The UK must reduce over time its dependence on fossil fuels, particularly unabated combustion.

3.3.7. Sections 3.1 and 3.2 set out a presumption in favour granting consent for energy NSIPs, and require the weight attributed to considerations of need to be proportionate to the project's actual contributions. The paragraphs of note are:

- Paragraph 3.1.1 states that *"the UK needs all the types of energy infrastructure covered by the NPS's in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions"*.
- paragraph 3.1.2 of EN-1 states that *"applications for development consent should be assessed on the basis that the Government has demonstrated that there is a need for those types of infrastructure"*.
- paragraph 3.1.4 states that *"the SoS should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the PA2008"*.
- paragraph 3.2.3 says, *"the weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure"*.

3.3.8. Section 3.3 sets out the benefits of having a diverse mix of all types of power generation, and how that could change over time to enable UK's power sector to decarbonise over time. The paragraphs of note are:

- Paragraph 3.3.4 set out briefly the different and complementary characteristics of the different types of electricity generation, and states:

- while fossil fuel generation can be brought on line quickly when there is high demand and shut down when demand is low, such power stations will not be low carbon until such time as fossil fuel generation can effectively operate with CCS;
  - renewables offer a low carbon and proven (for example, onshore and offshore wind) fuel source, but many renewable technologies provide intermittent generation; and
  - nuclear power is a proven technology that is able to provide continuous low carbon generation, but it is not as cost efficient to use nuclear power stations in this way when compared to fossil fuel generation.
- paragraph 3.3.5 sets out how the UK Government would like the mix of energy sources to change in order to decarbonise its power sector, and states *"The UK is choosing to largely decarbonise its power sector by adopting low carbon sources quickly."* Further on it states, *"This is why Government would like industry to bring forward many new low carbon developments (renewables, nuclear and fossil fuel generation with CCS) within the next 10 to 15 years to meet the twin challenge of energy security and climate change as we move towards 2050."*

- 3.3.9. Section 3.3 also talks about the urgency of the need for new electricity capacity, and states that there is an urgent need for new (and particularly low carbon) energy NSIPs to be brought forward as soon as possible, and certainly in the next 10 to 15 years. Paragraph 3.3.6 also states that since NSIPs take a long time to move from design conception to operation the Government has considered a planning horizon of 2025 for the energy NPSs in general and for EN-6 in particular, as an interim milestone to secure our longer-term objectives. The same paragraph states *"A failure to decarbonise and diversify our energy sources now could result in the UK becoming locked into a system of high carbon generation, which would make it very difficult and expensive to meet our 2050 carbon reduction target. We cannot afford for this to happen."*
- 3.3.10. Paragraph 3.3.18 refers to the Updated Energy and Emissions Projections (UEP) published in June 2010 by (then) Department for Energy and Climate Change (DECC) as a starting point to get a sense of the possible scale of future demand to 2025. Furthermore, the paragraph also states that *"It is worth noting that models are regularly updated and the outputs will inevitably fluctuate as new information becomes available."*
- 3.3.11. The publication of NPS EN-1 in 2011 in relation to the reference to *"the next 10 to 15 years"*, *"a planning horizon of 2025"*, and the UEP in section 3.3 of the NPS EN-1, is of relevance to the discussion in Chapter 5 of this Report.
- 3.3.12. As per Part 4 of NPS EN-1, generic impacts of relevance to this Application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport, socio-economic benefits at national, regional and local levels.



- 3.3.13. Part 4 of NPS EN-1 also details additional matters relevant to the ES, including:
- Whether the Proposed Development would have a significant effect on a European site;
  - the consideration of alternatives and good design;
  - consideration of CHP;
  - CCS readiness requirements;
  - climate change adaptation;
  - grid connection;
  - pollution control;
  - safety; and
  - health and security considerations.
- 3.3.14. Paragraph 4.1.2 of EN-1 states that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs, and that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 3.3.15. Additionally, paragraph 4.1.3 states that the SoS should consider environmental, social and economic benefits and adverse impacts, at national, regional and local levels. These considerations should include potential benefits in meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and any potential adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.
- 3.3.16. There is limited referencing to battery storage in this or any other of the energy suite of NPSs. We nevertheless, comment on the matter above.

## **EN-2: Fossil Fuel and Electricity Generating Infrastructure**

- 3.3.17. NPS EN-2 (July 2011) sets out the factors which influence the development of sites for fossil fuel power stations and the criteria which Government requires to be met by them. These include explanations of the Government's approach to subject matters raised by this Application, including the selection of gas combustion technology, CHP, CCS readiness, climate change adaptation and consideration of good design. In terms of the impacts of gas generating stations, NPS EN-2 re-iterates the policy in NPS EN-1; but adds the need to consider impacts of air emissions, landscape and visual, noise and vibration and water quality and resources. NPS EN-2 states that mitigation is required to control emissions but recognises that these emissions will be regulated through an EP from the EA.

## **EN-4: Gas Supply Infrastructure and Gas and Oil Pipelines**

- 3.3.18. NPS EN-4 (July 2011) sets out matters that bear on the consenting of the gas connection alignment for the Proposed Development, rather than the

Proposed Development itself. The Proposed Development will require a gas supply and a connection to gas transmission infrastructure. The gas pipeline does not meet the thresholds in the PA2008 for being a NSIP. In this case, the pipeline is necessary to transport gas to the gas turbine generating units, without which the generating units would have no fuel, and is classed as associated development. The Recommended DCO contains powers that relate to the CA and TP of land required for the gas connection. NGET and NGG state [AS-142] that they are close to finalising protective provisions with the Applicant and hold no objections regarding this Proposed Development.

## **EN-5: Electricity Networks Infrastructure**

- 3.3.19. NPS EN-5 (July 2011) sets out matters that bear on the consenting of electricity network infrastructure, which can include above ground electricity lines that form part of the distribution system, with a nominal voltage expected to be 132kV or above. NPS EN-5 will therefore be relevant to the associated electricity infrastructure required for the Proposed Development. NPS EN-5 sets out additional technology specific considerations for the assessment of electricity networks in relation to biodiversity and geological conservation, landscape and visual and noise and vibration. NGET and NGG confirm [AS-142] that they are close to finalising protective provisions with the Applicant and hold no objections to the Proposed Development.

## **EUROPEAN AND INTERNATIONAL LAW AND RELATED UK REGULATIONS**

- 3.3.20. The UK is, at the time of writing, a member of the European Union (EU). However, the UK is due to leave on or before 31 October 2019 (exit day). It is therefore possible that, on the day the SoS makes their decision on the Proposed Development, the UK may have left the EU.
- 3.3.21. The European Union (Withdrawal) Act 2018 (EUWA2018) converts EU law into UK law, and preserves laws made in the UK which implement EU obligations.
- 3.3.22. Should the UK have left the EU by the day on which the SoS decides on the Proposed Development, the SoS will note that retained EU law as defined in the EUWA2018 will continue to apply after exit day. The full body of case law developed in the EU courts and the UK courts up to exit day will continue to be binding on UK courts, in relation to retained EU law.
- 3.3.23. After exit day, retained EU law will continue to be supreme over existing UK legislation. Retained EU law which is inconsistent with new UK legislation made after exit day will not be supreme. Additionally, the principle of the supremacy of EU law, in relation to new laws made by the EU, will not apply in relation to new UK legislation passed after exit day.

- 3.3.24. The following is therefore applicable to the determination of the Proposed Development whether the UK remains or has left the EU on the day the SoS makes their decision on this NSIP.

### **Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive)**

- 3.3.25. The EIA Directive defines the procedure by which information about the environmental effects of a project is collected and considered by the relevant decision-making body before consent is granted for a development. It applies to a wide range of public and private projects, which are defined in Annexes I and II.
- 3.3.26. The Directive is transcribed into UK law under the EIA Regulations, discussed below, which applies to the Proposed Development.

### **The EIA Regulations 2017**

- 3.3.27. The EIA legislation for NSIP is the EIA Regulations, which came into force on 16 May 2017.
- 3.3.28. The Proposed Development falls under Schedule 1 paragraph 2(1) of the EIA Regulations as it constitutes a 'thermal power station and other combustion installations with a heat output of 300MW or more'. The application is supported by an EIA.
- 3.3.29. On 13 September 2017, the Applicant requested a Scoping Opinion from the SoS under Regulation 10 of the EIA Regulations for the Proposed Development. A Scoping Opinion setting out the information to be provided in the ES was issued by the Inspectorate on behalf of the SoS on 23 October 2017.

### **Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive)**

- 3.3.30. The Air Quality Directive came into force on 11 June 2008. The Directive consolidates four directives and one Council decision into a single directive on air quality. Under the Air Quality Directive, Member States are required to assess ambient air quality with respect to sulphur dioxide, nitrogen dioxide and nitrogen monoxide, particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), lead, benzene and carbon monoxide. The Directive set limiting values for compliance and establishes control actions where these are exceeded. It is transposed into UK statute through regulations made under the Environment Act 1995 (EA1995).
- 3.3.31. Part IV of EA1995 requires all local authorities in the UK to review and assess air quality in their area. If any standards are being exceeded or are unlikely to be met by the required date, then that area should be designated an AQMA and the local authority must draw up and

implement an Air Quality Action Plan aimed at reducing levels of the pollutant.

### **Environmental Permitting Regulations (England and Wales) Regulations 2016 (as amended)**

- 3.3.32. The EP Regulations apply to all new installations and transpose the requirements of the EU Industrial Emissions Directive (IED) (European Commission, 2010) into UK legislation. As the Proposed Development falls within s1 Combustion Activity under the EP Regulations, an EP would be required before the Proposed Development commences operation.
- 3.3.33. Under the IED and EP Regulations, the operator of an installation covered by the IED is required to employ Best Available Techniques (BAT) for the prevention or minimisation of emissions to the environment, to ensure a high level of protection of the environment. Generating stations exceeding 50MW thermal input such as the Proposed Development are covered by the IED and EP Regulations.

### **Industrial Emissions Directive (IED)**

- 3.3.34. The IED provides operational limits and controls to which plant must comply, including Emission Limit Values (ELVs) for pollutant releases to air. The operational generating station at the Proposed Development will fall under the Large Combustion Plant (LCP) requirements (Chapter III) of the IED, since it will be greater than 50MW in capacity. In addition, European BAT reference documents (BRefs) are published for each industrial sector regulated under the IED, and they include BAT-Achievable Emission Values which are expected to be met through the application of BAT. These values may be the same as those published in the IED, or they may be more stringent.

### **Council Directive 2009/147/EC on the conservation of wild birds (the Birds Directive)**

- 3.3.35. The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the EU. 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 SPAs comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.3.36. 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 to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

- 3.3.37. The relevance of this Directive to the Proposed Development is set out directly in Chapter 6 (Finding and Conclusions in relation to Habitats Regulations Assessment) of this Report, and it is also considered elsewhere as required.

### **Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)**

- 3.3.38. The Habitats Directive (together with Council Directive 2009/147/EC on the conservation of wild birds ('the Birds Directive')) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The Directive protects over 1,000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.) which are of European importance. It requires designation of such areas as SACs.
- 3.3.39. The Habitats and Birds Directives are transposed into UK law through the Conservation of Habitats and Species Regulations 2017 in respect of the terrestrial environment and territorial waters out to 12 nautical miles; and through The Conservation of Offshore Marine Habitats and Species Regulations 2017 for UK offshore waters.
- 3.3.40. The relevance of this Directive to the Proposed Development is set out directly in Chapter 6 (Finding and Conclusions in relation to Habitats Regulations Assessment) of this Report, and it is also considered elsewhere as required.

### **The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)**

- 3.3.41. The Habitats Regulations provide domestic force to the Habitats Directive and the Wild Birds Directive and provide the cornerstone on which the practice of HRA is undertaken in England and Wales. Their relevance to this application is set out directly in Chapter 6 (HRA) of this Report, but they are considered elsewhere as required.
- 3.3.42. The types of European sites (also referred to as Natura 2000 network of sites) relevant to this process are as follows:
- Sites of Community Importance (SCIs); SACs; and candidate SACs, designated pursuant to the Habitats Directive; and
  - SPAs designated pursuant to the Birds Directive.

By matter of policy, the Government also applies the Habitats Regulations to:

- Ramsar sites and proposed Ramsar sites (pRamsar) designated under the Ramsar Convention on Wetlands of International Importance;
- possible SACs (pSACs);

- potential SPAs (pSPAs); and
- sites identified, or required, as compensatory measures for adverse effects on any of the above European sites

3.3.43. The term European site is used throughout this Report and in this context includes all the sites listed above.

### **Council Directive 2000/60/EC (as amended) A framework for Community action in the field of water policy (the WFD)**

3.3.44. The WFD establishes a framework for water policy, managing the quality of receiving waters. The Directive is concerned with water management. Amongst other objectives, it requires EU Member States to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration.

3.3.45. In implementing the directive, NPS EN-1 states at paragraph 5.15.3 that an ES should describe existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics; and any impacts of the proposed project on water bodies or protected areas under the WFD.

3.3.46. The WFD is transposed into law in England and Wales by The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

3.3.47. The EA in their Response to the ExA's WQs [REP2-042] states that a WFD Screening was submitted to the EA during the pre-application period. The EA in its response confirmed to the Applicant that a full WFD assessment was not required in relation to hydromorphology or groundwater. It is agreed between the EA and the Applicant in the SoCG [REP9-009] that: *"The proposed works will not have any adverse impacts on hydromorphology or groundwater from the perspective of the Water Framework directive (WFD) and that a full WFD assessment will not be required in respect to these issues."*

3.3.48. ES Chapter 12 [APP-080] assess the effects of the Proposed Development on water quality. This is discussed further in the relevant section in Chapter 5 of this Report.

### **Council Directive 2009/31/EC Geological Storage of Carbon Dioxide**

3.3.49. Article 33 of the Directive requires an amendment to Directive 2001/80/EC (commonly known as the Large Combustion Plants Directive) such that developers of all combustion plants with an electrical capacity of 300MW or more (and for which the construction / operating licence was granted after the date of the Directive) are required to carry out a

study, known as the Carbon Capture Readiness (CCR) feasibility study, to assess:

- Whether suitable storage sites for carbon dioxide (CO<sub>2</sub>) are available;
- whether transport facilities to transport CO<sub>2</sub> are technically and economically feasible; and
- whether it is technically and economically feasible to retrofit for the capture of CO<sub>2</sub> emitted from the power station.

3.3.50. Article 36 of the IED (which also originates from Article 33 of Directive 2009/31/EC on the Geological Storage of Carbon Dioxide) also requires new LCP to be carbon capture ready.

### **The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013**

3.3.51. The Carbon Capture Readiness (CCR) (Electricity Generating Stations) Regulations 2013 (the CCR Regulations) came into force on 25 November 2013. These Regulations transpose Article 36 of the IED into UK law.

3.3.52. The CCR Regulations provide that no order for development consent (in England and Wales) may be made in relation to a combustion plant with a capacity at or over 300MW unless the relevant authority has determined (on the basis of an assessment carried out by the Applicant) whether it is technically and economically feasible to retrofit the equipment necessary to capture the carbon dioxide that would otherwise be emitted from the plant, and to transport and store such carbon dioxide from the site.

3.3.53. The Applicant submitted an updated CCS readiness statement at D7 [REP7-005] to support the application for the Proposed Development. The statement demonstrates that it would be technically feasible to retrofit and integrate the proposed CCS technology and the space has been made available in the application site. The statement also demonstrates that it would be technically and economically feasible to transport the captured CO<sub>2</sub> to the available offshore CO<sub>2</sub> storage areas within the lifetime of the repowered units. On this basis the Applicant's CCR Statement concludes that the Application complies with the requirements of the CCR Regulations.

## **3.4. OTHER LEGAL PROVISIONS**

### **Climate Change Act 2008**

3.4.1. The Climate Change Act 2008 (CCA2008) established the world's first long term legally binding framework to tackle the dangers of climate change. A key provision was the setting of legally binding targets for GHG emission reductions in the UK of at least 80% by 2050 and at least 26% by 2020, against a 1990 baseline. The Act also created the Committee on Climate Change, with responsibility for setting five-year Carbon Budgets covering successive periods of emissions reduction to 2050, advising and scrutinising the UK Government's associated climate

change adaptation programmes and producing a National Adaptation Plan for the UK Government to implement.

- 3.4.2. On 26 June 2019, the Climate Change Act 2008 (2050 Target Amendment) Order 2019 was made (SI 2019 No.1056), coming into force the following day. Article 2 amends the CCA2008 by replacing the 80% target with 100%. Because this occurred after the close of the Examination and one week before our report is to be submitted to the SoS, it has not formed the basis on which we have examined the Application or has it had any bearing on our final conclusions. The SoS will, however, need to consider this amendment in the planning balance.

## **Paris Agreement 2015**

- 3.4.3. The Paris Agreement concluded in December 2015 with an agreement from all parties to the United Nations Framework Convention on Climate Change (UNFCCC) to the central aim: *"to keep the global temperature rise this century well below 2 degrees Celsius above pre-industrial levels, while pursuing efforts to limit the increase even further to 1.5 degrees Celsius"*. The Paris Agreement requires all Parties to make ambitious efforts to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future. For this purpose, the parties agree to making finance flows consistent with a low GHG emissions and climate-resilient pathway.
- 3.4.4. The Paris Agreement requires all Parties to put forward their best efforts through nationally determined contributions and report regularly on their emissions and implementation efforts. Some of the key aspects of the Agreement include long-term temperature goal, global peaking of GHG and climate neutrality, and mitigation. There will be a global stocktake every five years to assess the collective progress towards achieving the purpose of the Agreement and to inform further individual actions by Parties.

## **Relevant Written Ministerial Statements (WMS)**

- 3.4.5. On 18 November 2015, SoS set out priorities for the UK's energy and climate change policy and the recent progress (then) DECC had made against those priorities. The SoS emphasised the need for affordable, reliable and clean energy as being critical to the economy, for national security, and to family budgets.
- 3.4.6. The Applicant referenced this WMS at the ISH1 on Environmental Matters on 5 December 2018 [EV-010, EV-011, EV-012, EV-013]. In its D5 submission [REP5-021], the Applicant quoted parts of two sentences from the WMS. These sentences have been set out here in their entirety:
- *"New nuclear and gas will be central to our energy secure future and we are encouraging investment in our shale gas exploration so we can add new sources of home-grown supply to our real diversity of imports."*
  - *"One of the greatest and most cost-effective contributions we can make to emission reductions in electricity is by replacing coal fired*



*power stations with gas. We will be launching a consultation in the spring on when to close all unabated coal-fired power stations. Our consultation will set out proposals to close coal by 2025 - and restrict its use from 2023."*

3.4.7. On 17 May 2018, SoS set out the Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of onshore shale gas resources and the actions that the respective Departments (BEIS and MHCLG) are taking to support the Government's position. The WMS states that the joint statement should be material consideration in planning decisions and plan-making in England.

3.4.8. The Applicant also referenced this WMS at the ISH1 on Environmental Matters on 5 December 2018 [EV-010, EV-011, EV-012, EV-013]. In its D5 submission [REP5-021], the Applicant has quoted from the WMS. These sentences have been set out here in their entirety:

- *"The UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations. We believe that gas has a key part to play in meeting these objectives both currently and in the future."*
- *"Gas still makes up around a third of our current energy usage and every scenario proposed by the Committee on Climate Change setting out how the UK could meet its legally-binding 2050 emissions reduction target includes demand for natural gas."*

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

3.4.9. 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 appropriate objectives and mechanisms for mitigation and compensation. In particular, the ExA finds that compliance with UK provisions on EIA and transboundary matters regarding impacts on biodiversity referred to in this Chapter, satisfies the requirements of Article 14 of the Convention.

3.4.10. 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 (DEFRA) which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.

3.4.11. This is of relevance to matters of biodiversity, EIA and HRA, which are discussed further in Chapters 5 and 6 of this Report.

## **The Wildlife and Countryside Act 1981 (as amended)**

- 3.4.12. The Wildlife and Countryside Act 1981 (as amended) is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the statutory nature conservation bodies (SNCBs) in the UK. The SNCB for England is NE.
- 3.4.13. The Act provides for and protects wildlife; nature conservation, countryside protection and National Parks; and PRoWs.
- If a species protected under the Act is likely to be affected by development, a protected species licence will be required from NE.
  - sites protected under the Act (including SSSIs) must also be considered.
  - the effects of development on the PRoW network are also relevant.

## **National Parks and Access to the Countryside Act 1949 (as amended)**

- 3.4.14. The National Parks and Access to the Countryside Act 1949 (as amended) provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also establishes powers to declare NNRs and for local authorities to establish Local Nature Reserves (LNRs).
- 3.4.15. National Parks and AONBs have statutory protection in order to conserve and enhance their natural beauty including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.

## **The Countryside and Rights of Way Act 2000**

- 3.4.16. The Countryside and Rights of Way Act provides measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities.
- 3.4.17. The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.

## **Natural Environment and Rural Communities Act 2006**

- 3.4.18. The Natural Environment and Rural Communities Act makes 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 1992.

### **The Planning (Listed Buildings and Conservation Areas) Act 1990**

- 3.4.19. The Planning (Listed Buildings and Conservation Areas) Act (LBCA Act) sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.
- 3.4.20. S66 of the LBCA Act states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. By virtue of s1(5) of the Act a listed building includes any object or structure within its curtilage.
- 3.4.21. S72 of the LBCA Act establishes a general duty on a local planning authority or the SoS with respect to any buildings or other land in a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 3.4.22. The ES Chapter 8 [APP-076] assess the historical significance of the existing Drax Power Station and other heritage assets that are within proximity to the Proposed Development. This is discussed further in the relevant section in Chapter 5 of this Report.

### **Ancient Monuments and Archaeological Areas Act 1979**

- 3.4.23. The Ancient Monuments and Archaeological Areas Act imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a designated Scheduled Monument. For non-designated archaeological assets, protection is afforded through the development management process as established both by the TCPA1990 and the Framework.

### **Environmental Protection Act 1990**

- 3.4.24. S79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. This is discussed further in the relevant section in Chapter 5 of this Report.

## **Control of Pollution Act 1974**

- 3.4.25. Sections 60 and 61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, a s60 notice may be issued by the local planning authority with instructions to cease work until specific conditions to reduce noise have been adopted. S61 of the CoPA provides a means for applying for prior consent to carry out noise generating activities during construction. Once prior consent has been agreed under s61, a s60 notice cannot be served provided the agreed conditions are maintained on-site. The legislation requires that Best Practicable Means be adopted for construction noise on any given site.

## **Noise Policy Statement for England**

- 3.4.26. The Noise Policy Statement for England (NPSE) seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The statement sets out the long-term vision of the government's noise policy, which is to *"promote good health and a good quality of life through the effective management of noise within the context of policy on sustainable development"*.
- 3.4.27. The Explanatory Note within the NPSE provides further guidance on defining 'significant adverse effects' and 'adverse effects', one such concept identifies *"Lowest Observable Adverse Effect Level (LOAEL)"*, which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur, and No Observed Effect Level (NOEL), which is the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established.
- 3.4.28. When assessing the effects of the Proposed Development on noise matters, the aims of the development should firstly avoid noise levels above the SOAEL; and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

## **Water Resources Act 1991, Flood and Water Management Act 2010, Water Act 2003 and 2014, Land Drainage Act 1991**

- 3.4.29. The above Acts set out the relevant regulatory controls that provide protection to waterbodies and water resources from abstraction pressures; discharge and pollution; and for drainage management related to non-main rivers. This is discussed further in the relevant section in Chapter 5 of this Report.

## **Water Preferred Policy 2016**

- 3.4.30. The Water Preferred Policy, Guidelines for the Movement of Abnormal Indivisible Loads is the Government's policy response to managing AILs. It defines AILs as large or heavy object which is indivisible into smaller parts without undue expense or risk of damage and, when placed on a vehicle, results in the attributes of that vehicle exceeding the normal legal restrictions on maximum vehicle dimensions or weight. Such loads can cause significant traffic congestion and disruption to road users and require greater safety mitigation. As such, it is the Government's policy to promote use of water for AIL movement. The document itself is authored by HwE. We discuss this further in Chapter 5 of our Report.

## **3.5. MADE DEVELOPMENT CONSENT ORDERS**

- 3.5.1. In responses made by the Applicant to WQs [PD-006], FWQs [PD-014] and to the ISH on the draft DCO [EV-014], the Applicant has cited as precedent the following DCOs, which the ExA has had regard to where relevant:

- Eggborough Gas Fired Generating Station Order 2018;
- Ferrybridge Multifuel 2 Power Station Order 2015;
- Triton Knoll Electrical System Order 2016;
- Thorpe Marsh Power Station Order 2011;
- Knottingley Power Project Order 2015;
- Ferrybridge Multifuel 2 Power Station Order 2015;
- Hinkley Point C New Nuclear Power Station Order 2016.

## **3.6. TRANSBOUNDARY EFFECTS**

- 3.6.1. The Applicant's Transboundary Screening document was submitted prior to the Examination [OD-006]. Under Regulation 32 of the EIA Regulations and based on the information available from the Applicant, the SoS is of the view that the Proposed Development is not likely to have a significant effect on the environment in another European Economic Area (EEA) State.
- 3.6.2. In reaching this view the SoS has applied the precautionary approach (as explained in the Inspectorate's Advice Note 12 Transboundary Impacts Consultation). Transboundary issues consultation under Regulation 32 of the EIA Regulations has therefore not been considered necessary. The ExA agrees with the SoS's conclusion.

## **3.7. OTHER RELEVANT POLICY STATEMENTS**

- 3.7.1. The ExA has taken other relevant Government policy into account, including:
- The Energy White Paper: Meeting the Challenge (May 2007);
  - UK Low Carbon Transition Plan (2009);
  - National Strategy for Climate and Energy (July 2009);
  - UK Renewable Energy Strategy (July 2009); and
  - The National Infrastructure Plan (updated 2016).

- 3.7.2. The ExA has taken into account energy and emissions projections, and, the BEIS Updated Energy and Emissions Projections 2017 submitted by CE in its WR in respect of Drax Re-power Annex 1 [REP2-002].

### **3.8. THE NATIONAL PLANNING POLICY FRAMEWORK**

- 3.8.1. The National Planning Policy Framework (the Framework) sets out the government's planning policies for England and how these are expected to be applied. It provides a framework upon which Local Planning Authorities (LPA) make development plans and is also a material consideration for LPAs when making planning decisions for development under the TCPA1990.
- 3.8.2. At the time of submission of this Application, the Framework dated from 2012. This was replaced during the pre-Examination period in July 2018 and was subsequently replaced again during the Examination in February 2019. The Applicant provided a statement of conformity with the Framework 2019 at D9 [REP9-013].
- 3.8.3. The policies contained within the Framework are supported by national 'Planning Practice Guidance' (the Guidance). Both the Framework and the Guidance are likely to be important and relevant considerations in decisions on NSIPs, but only to the extent relevant to that project.
- 3.8.4. Paragraph 5 of the Framework makes it clear that the document does not contain specific policies for NSIPs, where particular considerations can apply. It also states that matters considered to be both important and relevant to NSIPs, may include the Framework and the policies within it.
- 3.8.5. Section 2, paragraphs 7 and 8 states that the Government's approach achieving sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
- 3.8.6. Section 3, paragraph 17 states that in the plan-making framework, the development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area. Paragraph 20 and 22 state that strategic policies should look ahead over a minimum 15-year period and set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for infrastructure, including infrastructure for energy.
- 3.8.7. Annex 1, paragraph 212 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.
- 3.8.8. At various point in Chapter 5 of our Report, we refer to the Framework's tests in respect to planning obligations. To set this out in full here, paragraph 56 of the Framework lists the tests a planning obligation must meet. They are:

- Necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

### **3.9. LOCAL PLANNING POLICY**

- 3.9.1. NPS EN-1 Paragraph 4.1.5 states that planning policies outside of the NPSs can be important and relevant considerations to the SoS's decision and that these may include development plan documents or other documents in the local development framework. The Applicant confirms [APP-062] that the development aspects of the Proposed Development are solely within SDC's and NYCC's administrative areas.
- 3.9.2. The Applicant seeks various highway powers along highways within the administrative areas of both SDC and ERYC, such as the temporary closure of highways and/or the removal and replacement of street furniture/barriers on the highway, to enable construction materials to arrive at the Power Station Site. The exercise of the highways powers does not constitute 'development' and actions such as temporary road closures are therefore not included as part of the 'authorised development' for which development consent is sought. As a result, no part of the Proposed Development is located within ERYC and its planning policies are therefore not included.

### **3.10. LOCAL IMPACT REPORTS**

- 3.10.1. S104 and s105 of the PA2008 state that in deciding the Application the SoS must have regard to any LIR within the meaning of s60(3).
- 3.10.2. S60(3) of PA2008 defines an LIR as a "*report in writing giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area)*". Matters raised in the LIR are discussed in this Report and have been fully considered.
- 3.10.3. NYCC and SDC are the relevant local authorities for the area for the Proposed Development. Both authorities submitted a joint LIR at D2 [REP2-047]. The LIR is structured in a way that in that it considers the various chapters of the Applicant's ES in relation to the council's policies. The LIR therefore comments on the principle of the Proposed Development; air quality and emissions; landscape, biodiversity and green infrastructure; heritage; highways and transport; noise and vibration; socio-economic matters; minerals and waste; hydrology and flood risk; PRowS; and the adequacy of the draft DCO [AS-012].

### **3.11. THE DEVELOPMENT PLAN**

- 3.11.1. The LIR [REP2-047] identifies that, for the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA2004), the development plan for the area of the Proposed Development comprises the Selby District Core Strategy Local Plan 2013 (the Core Strategy), and the saved policies of the Selby District Local Plan 2005 (the Local Plan). The saved policies of the North Yorkshire Minerals Local Plan 1997 (the

Minerals Plan) and North Yorkshire Waste Local Plan 2006 (the Waste Plan) also apply.

3.11.2. The development plan policies cited by NYCC and SDC in their LIR [REP2-047] as being relevant to the Proposed Development are as follows:

- Core Strategy policy SP1: Presumption in favour of sustainable development;
- Core Strategy policy SP2: Spatial Development Strategy;
- Core Strategy policy SP13: Scale and Distribution of Economic Growth;
- Core Strategy policy SP15: Sustainable Development and Climate Change;
- Core Strategy policy SP17: Low Carbon and Renewable Energy;
- Core Strategy policy SP18: Protecting and Enhancing the Environment;
- Core Strategy policy SP19: Design Quality;
- Local Plan policy ENV 2: Environmental Pollution and Contaminated Land;
- Local Plan policy ENV 22: Protection of Listed Buildings;
- Local Plan policy ENV 25: Control of Development in Conservation Areas;
- Local Plan policy ENV 27: Scheduled Monuments and Important Archaeological Sites;
- Local Plan policy ENV 28: Other Archaeological Remains;
- Local Plan policy EMP 10 Additional Industrial Development at Drax (and Eggborough) Power Stations;
- Local Plan policy T1: Development in Relation to the Highway Network;
- Local Plan policy T2: Access to Roads;
- Local Plan policy T8: Public Rights of Way; and
- Waste Plan policy 5/1: Waste Strategy for Major Development.

3.11.3. The LIR [REP2-047] has also identified emerging Minerals and Waste Joint Plan which is currently being prepared by NYCC, the City of York Council and the North York Moors National Park Authority. The LIR [REP2-047] considers that some weight must be applied to the emerging Joint Plan because it has reached an examination-in-public stage. The policies identified from the emerging Joint Plan are:

- Emerging policy SO1: Safeguarding Mineral resources; and
- Emerging policy SO2: Developments Proposed within Minerals Safeguarding Areas.

3.11.4. We have considered whether policies in neighbouring authority development plans might be important and relevant. However, having considered the absence of LIRs from any neighbouring authorities and our own inspections of the setting of the Proposed Development, we have concluded that it is not necessary to consider policies from any neighbouring authority development plans.



## **4. THE PLANNING ISSUES**

### **4.1. MAIN ISSUES IN THE EXAMINATION**

4.1.1. Our Rule 6 letter [PD-004] outlined out initial assessment of the principal issues. These were set out in alphabetical order:

- Air quality and emissions;
- biodiversity and HRA;
- compulsory acquisition;
- the draft DCO;
- flood risk and water resources;
- ground conditions and contamination;
- historic environment;
- landscape and visual;
- noise and vibration;
- operation of the units;
- scope of the development and the EIA; and
- traffic and transport

4.1.2. Matters concerning climate change effects were not specifically listed. Biofuelwatch [AS-123], CE [AS-124] and Mr May [AS-126] wrote with concerns to that effect. At the PM [EV-002] and [EV-003], the ExA confirmed that climate change effects would be specifically made a principal issue and that we would be posing a number of WQs [PD-006] on the matter. Subsequently, no IPs raised any concerns with our initial assessment of the principal issues. They subsequently formed the final assessment.

4.1.3. Following the submissions of RRs and WRs, the ExA concluded that the overwhelming matters for Examination concerned the following, which we report at the start of Chapter 5 of our Report:

- Whether need for the Proposed Development is a matter before the SoS, and if so;
- whether or not the Proposed Development conformed the energy suite of NPSs and its contribution to meeting that need in respect to the three pillars underpinning the NPSs (security of supply, affordability and decarbonisation); and
- the impacts from the Proposed Development on climate change.

4.1.4. Matters concerning CCS readiness follows, on the basis of the link to the above and the discussion of whether CCS should instead be provided as part of the Proposed Development. The ExA decided that the discussion on CHP naturally followed CCS readiness.

4.1.5. The remainder of the issues discussed in Chapter 5 of our Report do not take on the same degree of importance as those matters discussed above. The list is broadly in the order of the ES Chapters [APP-072] to [APP-085], and in no particular order of importance, and subsequently aligns with the reporting in Chapter 5 of our Report:

- Traffic and transport;

- air quality and emissions;
- noise and vibration;
- historic environment;
- biodiversity and Habitats Regulations Assessment;
- landscape and visual;
- flood risk and water resources;
- waste management;
- ground conditions and contamination;
- socio-economics;
- major accidents and disaster prevention;
- statutory nuisance and human health;
- the consideration of alternatives; and
- the cumulative and combined effects.

4.1.6. In addition to the above, the main issues also concerned CA and the draft DCO (final version submitted at D9) [REP9-004]. These are discussed further in Chapters 9 and 10 of this Report.

4.1.7. Our WQs [PD-006] and FWQs [PD-014], and questions posed and discussions had at all ISHs and CAHs [EV-010], [EV-011], [EV-012], [EV-013], [EV-014], [EV-015] [EV-018], [EV-020] and [EV-021] were formed from our observations of the Application documents [APP-001] to [APP-138]; from RRs [RR-001] to [RR-323], from WRs and other submissions submitted at each deadline, and from local and national policies. Our findings and conclusions on all the issues raised in the written and oral submissions are reported in Chapter 5 of this Report.

## 4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. There were 323 RRs made. Of these, 320 were made in the pre-Examination period; a further three were made following the re-consultation period, which took place as a result of the Applicant's additional land request submitted at D2 [REP2-038], [REP2-039] and [REP2-040]. All but 17 raised very similar concerns in respect to the principle of the proposed development and its effect on climate change. Specifically:

- That the Proposed Development is incompatible with the CCA2008 insofar as it is incompatible with the UK's legally binding requirement to reduce carbon emissions by 80% by 2050;
- it is as such not sustainable and does not contribute to decarbonisation;
- Drax Power Station, being the UK's single biggest carbon polluter, should not be allowed to increase its GHG emissions from the site or on the environment;
- the Proposed Development being contrary to international obligations to limit the increase in global temperatures by 1.5-degrees;
- that CCS cannot be considered as mitigation because it is largely untested; and
- with decreasing reliance on North Sea reserves, the Proposed Development would lead to a reliance on, and thus apply pressure for shale gas development and fracking as a future fuel source.

- 4.2.2. In addition to the above, the RRs questioned the need for the Proposed Development. They state that there is no need for additional CCGT generating capacity in view of current Government projections, and as such it is contrary to NPS EN-1 and EN-2. The RRs also stated that the Applicant had not properly considered alternative fuel sources such as wind, solar, biogas or synthetic gas solutions, and that the Proposed Development breached the Human Rights Act.
- 4.2.3. These points were developed further and in detail by Biofuelwatch in their WR submitted at D2 [REP2-001], and by Mr May in his WR and subsequent letters at D2 [REP2-043], D3 [REP3-027] and at D5 [REP5-024].
- 4.2.4. ClientEarth (written as stylised) (CE) also produced a more substantial and detailed response in its WR submitted at D2 [REP2-002]. Here, CE essentially grouped its concerns into three points. They were:
- Firstly, that there was no need for the Proposed Development, having regard to Government forecasting for energy and what it had already consented; thus, it made little individual contribution to the requirement in NPS EN-1;
  - secondly, if the ExA and subsequently the SoS were satisfied that need could or had been demonstrated, that the Proposed Development failed the tests of s104 of the PA2008; and;
  - lastly, if the ExA and subsequently the SoS were satisfied that the Proposed Development satisfied the s104 tests; that its failure to provide CCS and opposition to CCS readiness was sufficient to find against the scheme.
- 4.2.5. Following the ISH on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013] and in response to requests from the ExA, CE was asked to provide additional evidence and justification on its concerns with the baseline scenarios identified by the Applicant in the ES Chapter 15 [APP-083], which it did at D4 [REP4-017]; and more substantively at D5 [REP5-022] and [REP5-023] and D6 [REP6-021]. The Applicant responded to all representations made by CE. All of the above is discussed in section 5.2 of Chapter 5 of this Report.
- 4.2.6. Of the remaining RRs which did not raise the above matters, the following had no objections or concerns with the Proposed Development:
- The Coal Authority [RR-151];
  - The Forestry Commission [RR-152];
  - Durham County Council [RR-163];
  - The NATS Safeguarding Office [RR-187];
  - NE [RR-212];
  - Public Health England [RR-228]; and
  - HE [RR-236].
- 4.2.7. The Canal & River Trust (CRT) [RR-235] and the Commercial Boat Operators Association [RR-288] raised no objection to the Proposed Development. However, they did state that they wished to promote the use of the River Ouse and the Drax Jetty for river traffic, and their RRs

requested that the ExA be satisfied with Section 4.10 of the ES [APP-072] which discounts the use of the river owing to environmental effects; costs; and restrictions to commercial traffic owing to limited draught and tidal restrictions. The ExA raised this matter in WQs [PD-006] which is discussed further in Section 5.18 of Chapter 5 of this Report. No further response was received from either IP during the Examination.

- 4.2.8. NPC [RR-239] raised a concern regarding traffic routing during the construction of Work No 7 (gas pipeline). The ExA raised this matter in WQs [PD-006] and again this is discussed further in Chapter 5 of this Report. NPC did not make any further representation in the Examination.
- 4.2.9. The EA raised very similar points both in its RR [RR-292] and WR [REP2-041]. Whilst raising no specific objection to the Proposed Development, the EA's main point concerned the information submitted concerning the proposed CCS site. It considered that further information was needed on:
- The gas pipeline and exit points;
  - the space required for the CCS together with an explanation of how space allocations have been determined;
  - the space required for cooling demand and whether the provision would be sufficient;
  - estimates of additional compressed air requirements along with the size of the compressor and their location;
  - estimates of additional waste water treatment;
  - whether emissions would be same or lower in OCGT mode than in CCGT mode;
  - whether CCS readiness would be able to operate at 90% efficiency in OCGT mode; and
  - CHP in respect to the provision of sufficient space and heat loads.
- 4.2.10. The EA [RR-292] and [REP2-041] also made a number of other minor comments. It set out what matters were to be determined by the EP Regulations, and also sought changes to the wording of Requirement 14 in the draft DCO [APP-008] in respect of ground investigations; to the Other Consents and Licences document [APP-068] to acknowledge and recognise that an EP may be required should there be any discharges to surface water from dewatering activities as part of the construction phase. The points raised were taken forward by the ExA in WQs [PD-006]. These are discussed further in Chapter 5 of this Report.
- 4.2.11. NGET and NGG [RR-308] raised no objections in its RR [RR-308] although had some concerns in respect to CA and protective provisions. These are discussed further in Chapter 9 of this Report.
- 4.2.12. NYCC and SDC had submitted separate RRs [RR-309] and [RR-315] respectively, but for all subsequent deadlines with the exception of D8 on landscape and visual matters, they issued a joint response including the LIR at D2 [REP2-047]. The issues raised in its RRs are also set out in the LIR submitted at D2 [REP2-047] and accordingly are discussed below.
- 4.2.13. YWT raised concerns in its RR [RR-320] and its D2 response to WQs [REP2-046] in respect to the effects of the Proposed Development on

climate change which are discussed above. It also made other comments and concerns; principally with the Applicant's mitigation in respect to biodiversity enhancement, which it felt that the Outline LBS [APP-135] needed strengthening by improving further ecological networks; and for existing habitats conditions to be raised to a 'high' standard. These matters are discussed further in Chapter 5 of this Report.

### **4.3. ISSUES ARISING FROM THE LOCAL IMPACT REPORT**

- 4.3.1. As set out in Chapter 3 of this Report, NYCC and SDC submitted LIR at D2 [REP2-047]. The LIR provided information on the following matters:
- A description of the area;
  - the relevant national and local plan policies;
  - the principle of the Proposed Development;
  - air quality and emissions;
  - landscape, biodiversity and green infrastructure;
  - heritage;
  - highways and transport;
  - noise and vibration;
  - socio-economic matters;
  - minerals and waste;
  - hydrology and flood risk;
  - PRowS; and
  - the adequacy of the draft DCO.
- 4.3.2. Except for landscape matters, no important and relevant issues were raised in the LIR that gave rise to concerns of in-principle breaches of relevant NPS policy or to objections to the Proposed Development.
- 4.3.3. While NYCC and SDC did not raise any concerns in respect to the scope and assessment undertaken in the ES on landscaping and visual matters, they did however raise concerns regarding mitigation, which they deemed to be insufficient.
- 4.3.4. Further representations were made by NYCC and SDC at D4 [REP4-016], [REP4-025] and [REP4-026] in which they tabled a detailed document on landscape mitigation from their consultant Mr Wooley. At the ISH3 on Environmental Matters held on Tuesday 12 February 2019, the ExA requested additional evidence and justification to support its representation made at D4 in respect of landscaping [REP4-016]. NYCC and SDC made further representations at D7 [REP7-017].
- 4.3.5. At D8, different views were set out in the representations from NYCC [REP8-015] and SDC [REP8-016]. The Applicant confirmed at D9 [REP9-002] and at the close of the Examination that it had failed to reach agreement with NYCC on landscaping matters. These are discussed in more detail in Chapter 5 of this Report.
- 4.3.6. Advice was provided on the matters to be addressed in Requirements in the Recommended DCO, and this has been taken fully into account in the remainder of this Report.

4.3.7. The Applicant was the only commentator on the LIR [REP3-026].

#### **4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS**

4.4.1. As conformity with the energy suite of NPSs is the principal matter for contention in the Examination, this is discussed in much further detail in Section 5.2 of Chapter 5 of this Report.

#### **4.5. CONFORMITY WITH THE DEVELOPMENT PLAN**

4.5.1. Chapter 3 of this Report sets out those documents which comprise the development plan on and around the Order Land. The policies listed are identified by NYCC and SDC in its LIR [REP2-047] as being relevant to the Proposed Development. The LIR did not identify conflict with the development plan. This matter was confirmed in the SoCG signed between the Applicant and NYCC and SDC which was submitted on the final day of the Examination on 4 April 2019 [AS-136].

4.5.2. The ExA acknowledges the continued concerns of NYCC [REP8-015] in respect to landscape and visual matters. While NYCC has not been specific, it is in our mind that NYCC may harbour concerns over potential conflict with Core Strategy policy SP18, which seeks to protect the environment from inappropriate development. We deal specifically with landscape and visual matters in Chapter 5 of the Report. However, taking into account the advice contained in NPS EN-1 on the inevitability of landscape effect from large-scale infrastructure, as well as the mitigation measures proposed in the Outline LBS [REP9-008] and secured by Requirement 8 of the Recommended DCO, the ExA finds no conflict against the policy. But even if some conflict were to be found with Core Strategy policy SP18, the ExA concludes, in line with s38(6) of the PCPA2004, no conflict with the development plan taken as a whole.

#### **4.6. CONFORMITY WITH OTHER RELEVANT LEGISLATION AND POLICIES**

4.6.1. The legislative and policy framework applicable to the assessment of this Application is summarised at a high level in Chapter 3 above. Individual references to relevant legislation and policy detail are drawn out in the sections of Chapter 5 of this Report. No IPs, except on the matter below, raised any concerns or objections regarding the Proposed Development's conformity against such legislation and policy.

4.6.2. CE in its WR submitted at D2 [REP2-002] questioned whether the Applicant's approach in ES Chapter 15 [APP-083] complied with the EIA Regulations in respect to its approach to identifying the baseline figures. We discuss this further in Section 5.3 of Chapter 5 of this Report, and the ExA concludes no such conflict arises. In general, the ExA is satisfied that the Proposed Development complies with the identified other legislation and policies identified in Chapter 3 of this Report.

## **4.7. ENVIRONMENTAL IMPACT ASSESSMENT**

- 4.7.1. The ES accompanied the Application, and was updated and supplemented during the Examination, as set out in Chapter 2 of our Report.
- 4.7.2. The changes to the ES outline above occurred as a result of the non-material amendments to the Proposed Development discussed in Chapter 2 of this Report, and through the Applicant's responses to RRs, WRs, WQs [PD-006] and FWQs [PD-014]. We always examined such changes and considered that the updates to the ES are non-material.
- 4.7.3. The ES states that the assessment presented in the ES follows a standard EIA methodology, and where possible, is based on legislation, definitive standards and accepted industry criteria. Its objective is to anticipate the changes or impacts that may occur to the receiving environment as a result of the Proposed Development, and to compare to the existing environmental conditions (the baseline) and those that would occur in absence of the Proposed Development (future baseline).
- 4.7.4. The EIA process involves identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES proposes mitigation measures to avoid, reduce, and offset the significance of the effect, expressed as residual effects after taking account of mitigation.
- 4.7.5. Our assessment of the Proposed Development undertaken in Chapter 5 of this Report will report on the environmental effects from the identified stages as set out in the ES listed, but excludes the Stage 0 Works, as this was removed from the DCO at D2, which is discussed in Chapter 2 of this Report.
- 4.7.6. Schedule 14 of the Recommended DCO sets out the documents proposed to be certified in the ES post-examination. The ExA accepts the list to be correct and reflects the document which comprise the ES. The ES is in our view sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.
- 4.7.7. The identified Stages in the ES are set out in Chapter 2 of this Report.

## **4.8. HABITATS REGULATIONS ASSESSMENT**

- 4.8.1. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects on European sites and hence is subject to HRA. As is conventional in ExA recommendation reports to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Chapter 6 of this Report below.
- 4.8.2. However, at this point in this Chapter it is necessary to record that we have considered all documentation relevant to HRA as required by section 4.3 of NPS EN-1, and we have taken it into account in the

conclusions reached here and in the Planning Balance (Chapter 7 below). Further, project design and mitigation proposals included in the ES and secured in the Recommended DCO have been fully considered for HRA purposes.

- 4.8.3. The ExA is satisfied on the adequacy of the data provided such that it does allow the SoS to act as the competent authority to undertake an appropriate assessment.



## **5. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES**

### **5.1. INTRODUCTION**

- 5.1.1. The principal issues in the Examination are set out in Sections 5.2 and 5.3 and concerned with the principle of the Proposed Development and conformity with the NPS EN suite, and climate change impacts.
- 5.1.2. Other matters considered in the Examination are discussed in Section 5.4 to 5.19. The order in which they appear is broadly in line with the ES Chapters [APP-072] to [APP-085] and are structured in no particular order of importance.

### **5.2. THE PRINCIPLE OF THE PROPOSED DEVELOPMENT AND CONFORMITY WITH NATIONAL POLICY STATEMENTS**

#### **Overview**

- 5.2.1. The individual contribution of the Proposed Development to meeting the identified need for infrastructure in the NPSs was the overriding principal issue in the Examination. IPs, notably the Applicant, CE, Biofuelwatch, and Mr May contributed significantly to the debate on this matter and the potential effect on climate change caused by the Proposed Development.
- 5.2.2. Essentially there were two main issues discussed in the Examination and in this Section. First, the Applicant's position throughout the Examination has been that the need for the Proposed Development is not a matter that either the ExA or the SoS should concern themselves with. IPs, principally CE, advanced arguments that NPS EN-1 did indeed permit an assessment of need.
- 5.2.3. Second, the position presented by CE, Biofuelwatch, YWT and majority of the RRs, right from the outset is that the total increase in GHG emissions goes against Government's commitment and International Obligations to decarbonisation. The Applicant's position here is that there is an urgent need for fossil fuel generating capacity, and therefore the adverse effects of the total increase in GHG emissions is not as relevant, as is the significantly improved efficiency of gas generating capacity over the existing coal generation. The Applicant states that gas generation is in fact required as part of the diverse mix of energy sources to meet the policy objectives of security of supply, affordability and decarbonisation.
- 5.2.4. The ExA posed numerous WQs on this matter; and the majority of the discussion at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013] was given over to this topic. The ExA's conclusions presented later in this Chapter are on the two key issues relevant to the conformity of the Proposed Development with the NPSs:

- Firstly, whether the need for the Proposed Development is a matter before the SoS; and
- secondly and if so, the individual contribution that the Proposed Development would make to meeting identified need, assessed against the three main pillars underpinning the NPS EN-1:
  - security of supply;
  - ensuring affordability; and
  - transitioning to a low-carbon economy (decarbonisation).

## **Whether Need for the Proposed Development is a Matter Before the SoS**

### **Background**

- 5.2.5. NPS EN-1 establishes a continuing need for electricity generation development and a role for fossil fuels in meeting that need. Paragraphs 2.2.5 and 2.2.23 state that the UK economy is reliant on fossil fuels and they are likely to play a significant role for some time to come; and that while the UK must reduce over time its dependence on fossil fuels, some new fossil fuel generating capacity will still be needed during the transition to a low carbon economy.
- 5.2.6. Paragraph 3.1.1 of NPS EN-1 sets out benefits and dis-benefits of all types of energy infrastructure (nuclear, renewables, fossil fuel) that are needed to achieve energy security. Paragraph 3.3.4 acknowledges the benefits of fossil fuel and particularly gas generation; that it can be brought on line quickly when there is high demand and shut down when demand is low, thus complementing base load generation from nuclear and intermittent generation from renewables.
- 5.2.7. In respect to decision-taking, paragraph 3.1.3 of NPS EN-1 is clear that the SoS should assess all applications for development consent on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described.
- 5.2.8. The Applicant's position throughout the Examination, as stated in ES Chapter 2 [APP-070], is that paragraphs 4.1.2 to 4.1.4 of NPS EN-1 contain a presumption in favour of granting consent for applications for energy NSIPs. Responding to the RRs at D1 [REP1-013], the Applicant state that NPS EN-1 paragraph 5.2.2 reinforces its view that that the ExA and SoS do *"not, therefore need to assess individual applications in terms of carbon emissions against carbon budgets"*.
- 5.2.9. The Applicant state [REP1-013] that the NPSs implement the Government's commitment on climate change, and the policies in the NPSs are not an issue for the Examination of the Proposed Development. Furthermore, it is the Applicant's view that because NPS EN-1 has effect in relation to the Proposed Development the 'need' for the Proposed Development in the context of the overarching policy objectives of security of supply, affordability and decarbonisation is not up for debate. This position was reinforced in the Applicant's D5 submission 'Note on

Substantial Weight to be Given to Need and Application of Tests Under S104' [REP5-021].

### Examination

- 5.2.10. The above position was disputed by CE in its submissions at D2 [REP2-002] and D5 [REP5-022]. CE state that while there is a presumption in favour of granting consent, NPS EN-1 in paragraph 4.1.2 requires the SoS to take into account the level and urgency of each technology's need. CE pointed to paragraph 2.2.23 which emphasises the word 'some' in respect to the need for fossil fuel capacity, which it says supports its argument that the NPS EN-1 does not support an endless and unquestionable need for fossil fuel generating stations.
- 5.2.11. CE specifically references paragraph 3.2.3 of NPS EN-1 to press its point, which states that: *"the weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure."*
- 5.2.12. The ExA explored this further in WQ ANC 1.10 [PD-006] and asked the Applicant to justify the need for the development with respect to national targets and UK energy need / demand. The ExA also asked the Applicant to justify the need for both Units X and Y. In its response, the Applicant [REP2-042] reiterated its position by referencing the NPS and other publications by National Grid and BEIS, to say that, amongst other things:
- There are no overall energy generation targets;
  - there is no dispute that electricity generation demand is increasing and is set to increase to 2050;
  - it is not the planning system's role to deliver specific amounts of generating capacity for each technology type; and
  - to meet the urgent need established in NPS EN-1 there is in fact a need for both Unit X and Unit Y.
- 5.2.13. Biofuelwatch in its WR [REP2-001] referred to NPS EN-1 paragraph 3.3.18 and footnote 16 to set out the relevance of projections and models, in particular the UEP published by DECC (now BEIS), that underpin the assessment of UK's future energy; and emphasise that: *"Models are regularly updated and the outputs will inevitably fluctuate as new information becomes available."* Biofuelwatch argued that reference to models and projections, and in particular the UEP, implies that the assessment of need should be informed by latest government models and projections, alongside the NPS.
- 5.2.14. The Applicant's response submitted at D5 [REP5-021] states that NPS-EN1 does not say that allocation of substantial weight is subject to the decision maker reviewing the latest up-to-date modelling and information. It argued that models explain the evidential basis on which the Government reached the conclusions, and whether that category of weight is changed in the future can only be decided by the SoS when he

reviews NPS EN-1, and not through the determination of a single application for development consent under the PA2008.

- 5.2.15. The ExA determined that this matter required further oral examination and it was included in the agenda for the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013]. Many of the arguments summarised above were reiterated by relevant IPs at that hearing.
- 5.2.16. While no IPs moved from their respective positions at the ISH1 [EV-010] to [EV-013], the Applicant qualified the urgent need for fossil fuel generating capacity because of its crucial role in system support services (inertia, frequency response, black start) which enables NGET to balance supply and demand in real time. The Applicant added that the increase in renewable energy generation does not reduce the need for fossil fuel generation. At the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013] the ExA questioned whether the demand for plants such as the Proposed Development would in fact increase if there is a high penetration of renewables. The Applicant confirmed that this was correct and referred to National Grid Future Energy Scenarios 2018.
- 5.2.17. In addition, the Applicant cited recent WMSs to emphasise the role of fossil fuels (later submitted into examination [REP5-021]), dated 18 November 2015 and 17 May 2018, which emphasise the important role of gas fired power stations to meet the Government's objectives of Carbon emission reductions.
- 5.2.18. The Applicant reinforced their arguments in writing in its D4 submission [REP4-012] and in the D5 submission [REP5-021].

### **Conclusion**

- 5.2.19. No IPs questioned the merits of policies in the NPS, and indeed we cited the provisions in s94(8) of the PA2008 at the PM and at the OFH1 held on Thursday 4 October 2018 [EV-002] [EV-003] [EV-003a] and [EV-005].
- 5.2.20. The ExA accepts that the NPS EN suite contain a presumption in favour of granting consent for applications for energy NSIPs. Need for all infrastructure types is established, and the ExA is fully cognisant of the important role fossil fuel generation plays in meeting the UK's future energy needs, and its positive benefits.
- 5.2.21. However, the ExA does not accept the Applicant's interpretation that the need for the Proposed Development itself should not be debated further. In our view, the NPS EN-1 paragraph 3.2.3 clearly draws a distinction between 'need for energy NSIPs' and the 'need for the Proposed Development'. The former does not, nor indeed should, axiomatically support the latter.
- 5.2.22. It is clear that underpinning NPS EN-1 is a road map and a direction of travel for future energy generation sources. As such, the passage of time

between the publication of the energy NPSs in 2011 and this Application in 2018-19, is a matter for consideration. Crucially, it is acknowledged throughout NPS EN-1 that there is an expectation to reduce over time, the dependence on fossil fuels to meet the overarching need for energy generation. Related to this point, the need to progressively increase dependence on low carbon technology to meet the commitment to reduce GHG emissions is also acknowledged throughout NPS EN-1. The ExA considers that both these matters have become increasingly significant due to the passage of time since the publication of NPS EN suite.

- 5.2.23. The ExA concludes that while the principle of need for energy NSIPs in general is not for debate, it is entirely correct that the SoS assesses the need for this Proposed Development, in light of the evidence submitted in this examination. Adopting this approach is in our view, in line with the inter-relationship between paragraphs 3.2.3 and 3.1.4 of NPS EN-1. Crucially, this approach is required to take account of the changes in energy generation since the publication of NPS EN-1.
- 5.2.24. Evidence submitted by IPs throughout the Examination demonstrates that energy generation in the UK is moving to lower carbon sources, which is in line with the policy objective in the NPS EN-1 requiring transition to a low carbon economy over time. It follows that requirements from each energy NSIPs must too continually change with time, to reflect the transitioning energy market. As such, the ExA also concludes that the assessment of need for the Proposed Development must take into account current information regarding energy generation submitted in to the Examination.
- 5.2.25. NPS EN-2 sets out three inter-dependent policy objectives of security of supply, affordability and decarbonisation, and it also describes how different types of infrastructures will strike a different balance to meet these policy objectives in the round. It is acknowledged throughout the NPS EN suite that different types of energy infrastructures will meet the policy objectives in a different way. The ExA considers that the Applicant, by referring to the importance of renewable electricity generation and the need for 'some capacity' from non-renewable sources [APP-083], has also acknowledged that different types of energy infrastructure meet UK's energy demand in different ways. As such, the ExA considers that in light of the representations from IPs, the need for the Proposed Development must be assessed on the basis of the individual contribution of the Proposed Development to meeting the overarching policy objectives of security of supply, affordability and decarbonisation.
- 5.2.26. Having established that the matter is before the SoS, the ExA has below undertaken an assessment of the individual contribution the Proposed Development makes to meeting need for infrastructure.

## Individual Contribution of the Proposed Development to Meeting the Identified Need for Infrastructure

### Security of Supply

#### Background

- 5.2.27. NPS EN-1 paragraph 2.2.20 states that it is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to a low carbon economy. It emphasises the need for electricity demand to simultaneously and continuously met by its supply; the requirement for a safety margin of spare generating capacity to accommodate unforeseen fluctuations and intermittency of supply; reliable associated supply chains; a diverse mix of technologies and fuels; and effective price signals.
- 5.2.28. The ES Chapter 15 [APP-083], paragraph 15.2.4 says that despite projected increases in energy efficiency, there is a growing demand for electricity generation as industry, transport and building heating which will reduce combustion processes and increasingly switch to electricity. This position is also supported in the NPS EN-1 paragraph 3.3.14.
- 5.2.29. The Applicant in response to the RRs [REP1-013] states that while renewable electricity generation will play an ever more important part in providing this capacity, some capacity will need to be provided by non-renewable sources in order to cope with the intermittency of most renewable generation technologies (e.g. wind, solar). The Proposed Development in delivering 3,600MW of electricity generation and store up to 200MW in its proposed battery storage capability facility therefore satisfies the growing demand.
- 5.2.30. The Applicant further states [REP1-013] that NPS EN-1 is not only a policy that aims to reduce carbon emissions from the power generation sector, but to ensure security of supply and affordability:
- "...energy is vital to economic prosperity and social well-being and so it is important to ensure that the UK has secure and affordable energy." (EN-1, paragraph 2.1.2)
  - "...the Government believes that the NPSs set out planning policies which both respect the principles of sustainable development and are capable of facilitating, for the foreseeable future, the consenting of energy infrastructure on the scale and of the kinds necessary to help us maintain safe, secure, affordable and increasingly low carbon supplies of energy." (EN-1, paragraph 2.2.19)
  - "The Government needs to ensure that sufficient electricity generating capacity is available to meet maximum peak demand, with a safety margin or spare capacity to accommodate unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events." (EN-1, paragraph 3.3.2)

- *"The larger the difference between available capacity and demand...the more resilient the system will be in dealing with unexpected events, and consequently the lower the risk of a supply interruption."* (EN-1, paragraph 3.3.3);
- *"[A] diverse mix of all types of power generation...helps to ensure security of supply."* (EN-1, paragraph 3.3.4)

### **Examination**

- 5.2.31. It was clear early in the Examination that when it came to security of supply there were two main matters that needed to be understood and examined. They were:
- Generating capacity; and
  - system services, such as inertia and flexibility.
- 5.2.32. Generating capacity was discussed at length and throughout the Examination. In its D2 submission, CE's WR [REP2-002] states that on the question of scale and urgency, NPS EN-1 refers to the need for only "some" new fossil fuel generation in paragraphs 2.2.23 and 3.6.3, and that the need for unabated fossil fuel generation is not specified as urgent. CE appended the BEIS, 2017 UEP which it says illustrates that BEIS projects only 6,000MW of new gas generation capacity being built through to 2035. CE asserted that this demonstrates a lack of need for the Proposed Development or for further gas generation, given the amount of gas generation capacity that has already received development consent.
- 5.2.33. CE [REP2-002] also referred to a publication of a document entitled "Coal To Clean – How the UK phased out coal without a dash for gas" by "WWF / Sandbag". This purports to present evidence that 15,000MW of new gas generation has planning consent, and at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013] it states that an additional 2,500MW at Eggborough had also recently been granted planning consent in 2018. It further cited this evidence to state that influx of renewables means that the remaining required CCGT capacity is needed only at a low load factor, which is met well by storage, demand response and interconnection.
- 5.2.34. CE concluded [REP2-002] that approving the Proposed Development would take the total new consented capacity to over three times BEIS's projections, referring to information in the WWF/Sandbag publication and the BEIS 2017 UEP. Thus, it says the UK does not need any new-build large gas power capacity to achieve energy security. Biofuelwatch's WR submitted at D2 [REP2-001] largely supported this position.
- 5.2.35. Mr May in his RR [RR-298] states that the increased capacity of the Proposed Development's gas units alone exceeds 10% of the current day UK energy demand but did not support his claim with supporting evidence and this has been challenged by the Applicant [REP2-035].
- 5.2.36. The ExA discussed this matter at the ISH1 on Environmental Matters held on Wednesday 5 March 2018 [EV-010] to [EV-013]. The Applicant gave

oral submissions, reinforced in written submissions at D3 [REP3-024] and D5 [REP5-021] that the consented capacity does not result in actual generation, and as such is not supported by NPS EN-1. In response to CE's WRs [REP3-024] paragraph 4.10.7, the Applicant provided a table of CCGT projects which have received consent in the UK since 1993 and their current status, to demonstrate that most of the consented projects have not been constructed and/or are not in commercial operation.

- 5.2.37. When it comes to system services (including inertia and flexibility), the Applicant in response to CE's WRs [REP3-024] states that a significant benefit of coal or gas-fired power stations are their flexibility and that they can increase or decrease their electrical output in response to the demands at short notice. Intermittent renewables such as wind and solar are reliant on the weather and cannot adjust their output when required. Nuclear power stations, while capable of providing some level of flexible operation, for commercial reasons generally operate at full capacity. The Applicant argued that as the power sector continues to decarbonise, there is a need to retain and replace flexible thermal generation alongside the continued deployment of low carbon technologies. The Applicant further states that a significant number of thermal power stations around the country have closed, and since 2012, coal generation has reduced by 80%, such that coal capacity (12.9 GW) is now lower than the installed capacity of solar PV panels (13.1 GW).
- 5.2.38. Upon further scrutiny at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013], the Applicant argued that the importance of the strategic location of the Proposed Development within 'Boundary B7a' was also of relevance due to the volatility of power flows caused by intermittent renewables. The Applicant explained that NGET as the Electricity System Operator has divided the UK into a number of regional 'boundaries. Across the North of England there are three transmission regions including Boundary B7a (in which Drax Power Station is located). When most of this area and Scotland is generating power from renewables, transmission capability (i.e. the capability to transfer electricity safely, efficiently and therefore economically from the renewable plant where it is generated to where it is needed) can be limited for the renewable plant due to intermittent renewable generating technology. The Applicant further explained that those transfer requirements need to be met by fossil fuel generation (such as the Proposed Scheme) rather than renewables, in order to provide large values of reactive power, inertia and short circuit infeed for system stability and fundamental system requirements. The Applicant's position was subsequently explained in its D5 submission [REP5-021].
- 5.2.39. The ExA asked NGET in FWQ ANC 2.3 [PD-006] to confirm the Applicant's position on this matter. NGET's response [REP6-022] states that NGET dispatches generation to meet demand in a specific order called the merit order. This is determined by the cost at which each generator bids on to the system. For most renewable plants this figure is low (essentially free) as there are no fuel costs. The merit order is therefore made up from all available renewable sources, followed by more expensive plant such as gas and coal. When dispatching generation to meet demand the merit



order is followed. NGET went on to explain that if Drax was generating at the time it is likely that the level of available renewables on the system was not sufficient to meet demand and more expensive plant was required. NGET states that renewable plants do not contribute to system inertia like conventional plants do. Furthermore, NGET on occasion may be required to dispatch plant otherwise 'out of merit' to maintain an adequate level of system inertia. In this case plants such as Drax may be brought on ahead of, or as a replacement to renewable generation.

## **Conclusion**

- 5.2.40. Evidence submitted by the Applicant as well as other IPs, in particular referring to Government's BEIS 2017 UEP, demonstrates that energy generation in the UK is moving to lower carbon sources, and that trend is projected to continue at pace. This is in line with the requirements of NPS EN-1. The ExA has already concluded that current models and projections, and in particular the UEP, should be taken into account when determining the need for fossil fuel generation in the Proposed Development.
- 5.2.41. The current models and projections demonstrate that consented gas generation capacity has surpassed BEIS 2017 UEP projections. The Applicant makes a valid point in arguing that consented capacity is not guaranteed to be delivered. The ExA considers that while the consented gas capacity remains unbuilt, little evidence was advanced by any IPs to question the realistic likelihood that at least some of this capacity would be built out. In our view, this calls into question the need for more fossil fuel generation and in particular the need for this Proposed Development.
- 5.2.42. We take into account BEIS 2017 projections, and other evidence which demonstrate that renewable energy generation has also surpassed Government projections in the 2010 UEP. As renewable energy generation continues to grow, confirmed by the Applicant [APP-083] and [REP5-021], the ExA finds that the need for the Proposed Development (in the context of other consented gas generation capacity) is likely to be limited to system inertia. This was also largely confirmed by NGET in its D6 submission [REP6-022] which says 'on occasion' plants such as Drax may be brought on ahead of, or as a replacement to renewable generation to maintain an adequate level of system inertia. It will be for the SoS to determine whether this amounts to meeting an urgent need. The ExA considers that this shows low level need and urgency for the Proposed Development's fossil fuel generation.
- 5.2.43. The ExA considers that evidence submitted into the Examination demonstrates that the diverse mix of current energy generation is in line with the direction of travel set out in the NPS (in particular paragraph 2.2.23), which has set out a clear expectation for reducing priority for fossil fuel generation. Since NPS EN-1 was designated, there has been new fossil and specifically new gas capacity consented to underpin the anticipated ongoing role of fossil fuels in supply security. Equally, we believe that a major new addition over and above the consented gas capacity harms the de-carbonisation objective whilst not being required to address the security of supply objective. In that context the ExA

concludes that the Applicant has not made a convincing case for the need for more fossil fuel (Natural Gas) generating capacity. As such, the ExA concludes that the individual contribution of the Proposed Development against the policy objective for security of energy supply is limited to system inertia and flexibility to support renewable energy generation. The ExA considers that this has a neutral effect and cannot be afforded considerable weight in demonstrating the individual contribution of the Proposed Development to meeting identified need.

## **Affordability**

### **Background**

- 5.2.44. The Applicant's D5 submission [REP5-021] states that the Proposed Development contributes to the need to provide affordable energy in two ways, namely:
- By providing efficiency gains associated with the re-use of existing site and infrastructure; and
  - by providing more efficient energy than is currently being generated by the existing coal units.
- 5.2.45. The Applicant states [REP5-021] that the re-use of existing infrastructure drives down cost for the Proposed Development, which will ultimately lower costs for consumers. The Applicant also states that the proposed gas turbine operation when compared with existing CCGTs will mean efficiencies of approximately 55%.

### **Examination**

- 5.2.46. The evidence and arguments presented to demonstrate the contribution of the Proposed Development to meeting the policy objective of affordability covered mainly three areas:
- Re-use of existing infrastructure;
  - more efficient energy generation than the existing coal units; and
  - more affordable energy for the consumer.
- 5.2.47. The Applicant states in its D5 submission [REP5-021] at paragraph 3.7 that the lower capital cost of the scheme due to re-use of existing infrastructure will be reflected in a lower capacity market auction price and ultimately lower costs for consumers. While this assertion has not been supported with evidence, it was not challenged by IPs.
- 5.2.48. The ExA discussed the matter regarding more affordable energy for the consumer at the ISH1 on Environmental Matters held on Wednesday 5 March 2018 [EV-010] to [EV-013]. The Applicant introduced NGET's Stack arrangement as evidence. The Applicant explained that the 'Stack' is the list of available generation in the market at a point in time, and the cheapest generator will have an advantage and will be dispatched (or purchased) by NGET first. It follows that efficient plant means cheaper electricity. Here the Applicant referred to 'coal and older gas plants' as more expensive plants are further down the Stack than renewable plants. The Applicant states that the Proposed Development would be highly

efficient, and would sit high on the Stack, but not sit high enough on the Stack to displace current or future renewable generation. This has been explained in some detail in the Applicant's D5 submission [REP5-021].

5.2.49. NGET in response [REP6-022] to ExA FWQs [PD-014] confirmed the Applicant's explanation. It states that NGET dispatches generation to meet demand merit order which is determined by cost. For most renewable plants this figure is very low (essentially free) as there are no fuel costs. The merit order is therefore made up from all available renewable sources, followed by more expensive plant such as gas and coal.

5.2.50. The Applicant [REP5-021] and NGET [REP6-022] suggested more efficient plants will generate cheaper electricity and find the Proposed Development would be more efficient compared to 'coal and older gas plants'. Furthermore, both the Applicant and NGET state that while renewable energy in the current state of the market is more typically the cheapest form of energy, the Proposed Development is more efficient than coal.

### **Conclusion**

5.2.51. No IPs questioned the construction and conversion costs of the existing Units 5 and 6 as being uncompetitive against building the Proposed Development anew. The ExA had subsequently no obvious reason to question this matter further.

5.2.52. However, the ExA considers that it is axiomatic that any energy NSIP, if policy compliant, will deliver improved efficiency over coal and older gas plants. In that regard, the Applicant's conclusion that the Proposed Development would represent an improvement over the existing situation cannot in our view be afforded considerable weight in the planning balance.

5.2.53. In any event, little evidence was advanced by any IPs to demonstrate that the Proposed Development, having regard to its improved efficiency, would deliver more affordable energy for consumers than any new Energy NSIP ordinarily would. Indeed, both the Applicant and NGET confirmed that it is the production of renewable plants that will deliver cheaper energy than fossil fuel plants for the reasons given above.

5.2.54. The ExA concludes that the individual contribution of the Proposed Development to meeting the policy objective of affordability is neutral. While the Applicant has demonstrated that the Proposed Development will deliver affordable energy, the ExA concludes that this cannot be afforded considerable weight in demonstrating the individual contribution of the Proposed Development to meeting identified need.

## Decarbonisation

### Background

- 5.2.55. The ExA comments on decarbonising and carbon emissions as separate matters. Decarbonisation, as a policy objective is discussed here. Carbon emissions as an impact of the Proposed Development is discussed under the following section on climate change.
- 5.2.56. NPS EN-1 is clear about Government's commitment to meeting the target to cut GHG emissions by 80% by 2050, compared to 1990 levels (paragraph 2.2.1). Paragraph 2.2.5 states that most of UK's power stations are fuelled by coal and gas and acknowledges that this dependence will need to continue for some time to come. But in paragraph 2.2.6 the NPS sets a clear policy direction and says that UK needs to wean itself off such a high carbon energy mix to reduce greenhouse gas emissions, and to improve the security, availability and affordability of energy through diversification.
- 5.2.57. NPS EN-1 paragraph 3.3.5 states that the UK is choosing to decarbonise its power sector by adopting low carbon sources quickly, and identifies a diverse range of energy sources, including renewables, nuclear and fossil fuel generation with CCS, as a priority for industry to bring forward in the next 10 to 15 years (following the publication of the NPS in 2011).
- 5.2.58. The Applicant's position [REP5-021] is that the need for fossil fuel generation is part of a mix of energy that is required in order to move to a low carbon economy and meet climate change targets. The Applicant acknowledges that the UK has decarbonised its power sector at pace, due to the rapid phase-out of coal power and growth of renewables but asserts that gas generated energy is essential for the continued decarbonisation of other sectors (such as transport and building heating) as they electrify.

### Examination

- 5.2.59. CE states in its WR [REP2-002] that allowing long-term high-carbon infrastructure such as the Proposed Development to be built, risks making the UK's future decarbonisation significantly more difficult and expensive. CE further state that the NPSs specifically warns against this risk in the strongest terms in paragraph 3.3.16, which acknowledges the long time it can take to design and deliver energy NSIPs and sets an interim planning horizon of 2025. The paragraph also says that: "*A failure to decarbonise and diversify our energy sources now could result in the UK becoming locked into a system of high carbon generation, which would make it very difficult and expensive to meet our 2050 carbon reduction target. We cannot afford for this to happen.*" This point has also been made by Biofuelwatch [REP2-001].
- 5.2.60. The ExA questioned CE in WQ ANC 1.9 [PD-006] to substantiate its view given the requirements in NPS EN-1 and EN-2 that it is for industry to propose new energy infrastructure projects and that the Government does not consider it appropriate for planning policy to set targets or limits

on different technologies. In its response, CE referred [REP2-002] to a publication by The Department for International Development (DFID) on carbon lock-in risk (Economic Consulting Associates (commissioned by the Department for International Development), Carbon lock-in toolkit, February 2015). It explained how the building of a piece of high-carbon infrastructure with a long operating life can create a set of incentives (or a 'path dependency') that is both difficult and expensive to correct.

5.2.61. The Applicant in response at D3 [REP3-024] asserted that the Drax Repower project is a high efficiency, flexible plant, and with technological developments the plant will take advantage of battery storage and carbon capture and continue the transition toward a low-carbon economy. The Applicant says at the end of the 25 years' operating life of the Units, expected to be by 2050, both Units X and Y will be in the decommissioning phase of the development and will have likely taken advantage of the technological developments. The Applicant concludes that this does not therefore represent a carbon lock-in and should be considered in the round with the decarbonisation of other industrial sectors.

5.2.62. The climate effects of the Proposed Development are discussed and examined in the Section below.

### **Conclusion**

5.2.63. The policy objective for decarbonisation presents a direction of travel; and according to the evidence submitted by IPs and by the Applicant throughout the Examination, the market is moving largely in line with this direction of travel. The expectation throughout the NPSs is that as the UK economy progressively decarbonises, the need for fossil fuel generation may not diminish entirely, but dependency on it will become less and less. For instance, paragraph 3.3.11 states that, *"even when the UK's electricity supply is almost entirely decarbonised, we may still need fossil fuel power stations for short periods when renewable output is too low to meet demand"*.

5.2.64. While we acknowledge the Applicant's response at D3 [REP3-024], the ExA cannot be certain (and the DCO provides no legal commitment) that the Proposed Development would take advantage of technological development up to 2050. The ExA does not consider that the said 'likelihood' can be given substantial weight, and we agree with CE [REP2-002] and Biofuelwatch [REP2-001] that the operating life of the Proposed Development presents a significant risk of high carbon lock-in after the planning horizon of 2025 identified in the NPS EN-1. In addition, the possibility and cost of early decommissioning has not been accounted for by the Applicant, in line with policy objectives of affordability and decarbonisation.

5.2.65. As will be discussed in Section 5.3 of this Report, while acknowledging that the Proposed Development would increase the quantum of energy generated at the Power Station Site, and that gas has a better intensity rating than coal, the Proposed Development would generate a significant increase in total GHG emissions over the existing Units 5 and 6.

- 5.2.66. Little evidence has been advanced by any IPs to support the need for the proposed quantum of energy (3,800MW) to justify the approach to decarbonisation, given the significant increase in total carbon emissions. Neither has any IP advanced any significant evidence to suggest that a considerable surplus in supply would lead to more affordable energy for the consumer. This further reinforces the risk of high carbon lock-in for much greater quantum of fossil fuel energy generation than currently exists.
- 5.2.67. The ExA therefore concludes that the individual contribution of the Proposed Development to meeting the policy objective of decarbonisation has not been met and carries negative weight to meeting identified need.

## **Overall Conclusion**

- 5.2.68. NPS EN-1 clearly draws a distinction between 'need for energy NSIPs' and the 'need for the Proposed Development'.
- 5.2.69. While the principle of need for energy NSIPs in general is not for debate and the NPS contains a presumption in favour of granting consent for applications for energy NSIPs, the ExA concludes that it is entirely correct that the SoS assesses the need for the Proposed Development because of the evidence presented into this examination. Crucially, this approach is required to take account of the changes in energy generation, in particular the additional consented gas capacity and increasing dependence on low carbon sources, since the publication of NPS EN-1.
- 5.2.70. The ExA considers that the NPSs provide the policy framework to assess the need for the Proposed Development; need can be assessed on the basis of the individual contribution of the Proposed Development to meeting the overarching policy objectives of security of supply, affordability and decarbonisation. In doing so, we need to acknowledge the new gas capacity consented since NPS EN1 was designated; as such current models and projections regarding energy generation submitted in to the Examination, should be taken into account.
- 5.2.71. The consented gas generation capacity has already surpassed BEIS 2017 UEP projections, and this shows low level need and urgency for fossil fuel generation. As such, the ExA concludes that the individual contribution of the Proposed Development against the policy objective for security of energy supply is limited to system inertia and flexibility to support renewable energy generation. The ExA considers that this has neutral effect and cannot be afforded considerable weight in demonstrating the individual contribution of the Proposed Development to meeting identified need.
- 5.2.72. The Applicant does not adequately demonstrate that the Proposed Development would deliver any more affordable energy for consumers than any new energy NSIP ordinarily would; but it is established that any renewable energy will be cheaper than the Proposed Development. Therefore, the ExA concludes that the individual contribution of the Proposed Development to meeting the policy objective of affordability is

neutral. While the Applicant has demonstrated that the Proposed Development will deliver affordable energy, the ExA concludes that this cannot be afforded considerable weight in demonstrating the individual contribution of the Proposed Development to meeting identified need.

- 5.2.73. Because of this, there is a significant risk of high carbon lock-in, which goes against the on-going and rapid transition to low carbon energy generation as advocated by NPS EN-1. Therefore, the individual contribution of the Proposed Development to meeting the policy objective of decarbonisation has not been met and carries negative weight to meeting identified need.
- 5.2.74. The ExA concludes that NPS EN suite policy still stands strongly for the proposition that there is a need for additional energy infrastructure in general. However, in circumstances where decarbonisation is a key policy objective and Government commitment, where a substantial body of new fossil fuel generating capacity has been consented and developed since the NPS EN suite policy was designated, and where the Proposed Development would add a substantial volume of further fossil fuel generation capacity until 2050, the ExA concludes that the Applicant has not demonstrated that the Proposed Development on balance meets an identified need for gas generation capacity when assessed against the NPSs overarching policy objectives of security of supply, affordability and decarbonisation. The overall effect in the planning balance is negative.

## **5.3. CLIMATE CHANGE IMPACTS**

### **Background**

- 5.3.1. NPS EN-1 reinforces the Government's commitment, as set out in the CCA2008, to cut GHG emissions by 80% by 2050, compared to 1990 levels. The Paris Agreement, of which the UK is a signatory, undertakes to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future. The Paris Agreement's central aim is to keep the global temperature rise this century well below 2 degrees Celsius above pre-industrial levels, while pursuing efforts to limit the increase even further to 1.5 degrees Celsius. Additionally, the Paris Agreement aims at making finance flows consistent with a low GHG and climate-resilient pathway.
- 5.3.2. ES Chapter 15 [APP-083] sets out the emissions of the existing current coal-fired Units 5 and 6, together with the Proposed Development. As a prelude, the ES [APP-083] states that the Government intends to end unabated coal-powered generation after October 2025. After October 2025 coal-powered generation could only continue if GHG emissions can be limited to an intensity rate of 450 grammes of carbon dioxide per kilowatt hour (gCO<sub>2</sub>/kWh). This is considerably lower than the rate at which the current Units 5 and 6 are operating, which is 840gCO<sub>2</sub>/kWh (stated in Table 15-13 in ES Chapter 15 [APP-083]).
- 5.3.3. The baseline scenario in the ES [APP-083] assumes that coal-powered generation from Units 5 and 6 would continue at an emission intensity of

840gCO<sub>2</sub>/kWh until October 2025. After that date the ES [APP-083] assumes a future baseline of one of the two following scenarios. Either:

- The coal-powered generation would continue from Units 5 and 6 at the Government 's proposed limit of 450g CO<sub>2</sub>/kWh; or
- if Units 5 and 6 would cease operating and be decommissioned; and the lost energy would be replaced elsewhere on the National Grid, with the assumption that the replacement generation capacity would be similar in scale and nature and of a similar emissions intensity (i.e. 450 gCO<sub>2</sub>/kWh). This would continue until 2050 (the lifetime of the Proposed Development).

5.3.4. The ES [APP-083] states that once the current generating Units 5 and 6 have been replaced with gas-powered Units X and Y, the Proposed Development would generate electricity with a GHG intensity of 380 gCO<sub>2</sub>/kWh; which equates to a reduction in emissions intensity -55% less than the current coal-fired generation. Even after 2025, when it is assumed that any coal-powered generation (either at Drax or elsewhere on the national grid) would be required to meet the Government's proposed limit of 450gCO<sub>2</sub>/kWh, the Proposed Development would generate electricity of -16% lower emissions intensity.

5.3.5. Regarding the net effect of the Proposed Development, the Applicant says in the ES [APP-083] that the total direct GHG emissions related to electricity generation between 2020 and 2050 is +90% higher for the Proposed Development when measured against the baseline scenario. In that regard the Applicant acknowledges that the Proposed Development results in a significant negative effect from increased GHG on climate. The ES [APP-083] states that this must be considered alongside up to +173% increase in generation capacity from 1,320MW (existing coal-powered generation from Units 5 and 6) to 3,600MW (proposed gas-powered generation from Units X and Y).

**Table 5.1: Summary of GHG Emissions as set out in the ES [APP-083]**

Item	Years	Baseline Scenario (2 x 660 MW)	Proposed Development (2 x 1,800 MW)	Net effect of Proposed Development
Total GHG emissions (tCO <sub>2</sub> e)	2020 – 2050	188,323,000	287,568,000	+168,597,000 (+90%)
Maximum electricity generation capacity	2020 – 2050	2 x 660MW = 1,320MW	2 x 1,800MW = 3,600MW	+2,280MW (+173%)



Item	Years	Baseline Scenario (2 x 660 MW)	Proposed Development (2 x 1,800 MW)	Net effect of Proposed Development
GHG emissions intensity (gCO <sub>2</sub> e/kWh)	2020 – 2050	2020 to 2025: 840  2026 to 2050: 450	2023 to 2050: 380	2023 to 2025: -460 (-55%)  2026 to 2050: -70 (-16%)

- 5.3.6. The summary of residual effects of total GHG emissions from Units X and Y during operation are described in the ES [APP-083] as being major, negative, permanent, direct and long term. And for GHG emissions intensity, the summary of residual effect is described as being moderate, positive, permanent, direct and long term.

### Examination

- 5.3.7. The two assumptions that underpin the Applicant's baseline in the ES [APP-083] were the subject of considerable scrutiny during the Examination. The two assumptions have been summarised here again:
- The coal-powered generation would continue from Units 5 and 6 at an emission intensity of 840 gCO<sub>2</sub>/kWh until 2025, and after 2025 would continue at the Government 's proposed limit of 450g CO<sub>2</sub>/kWh; or
  - if Units 5 and 6 cease operating and are decommissioned; and the lost energy would be replaced elsewhere on the National Grid, with the assumption that the replacement generation capacity would be similar in scale and nature and of a similar emissions intensity (i.e. 450 gCO<sub>2</sub>/kWh). This would continue until 2050 (the lifetime of the Proposed Development).
- 5.3.8. CE in its WR [REP2-002], Mr May in his WR [REP2-043] and BiofuelWatch in its WR [REP2-001] all raised doubts regarding operating coal-powered generation at emissions intensity rating of 450 gCO<sub>2</sub>/kWh for Units 5 and 6 were they to continue operating beyond 2025, stating that this is unrealistic and overly optimistic. They state that no evidence has been advanced by the Applicant that coal-fired generated power stations can be operated economically at an emissions intensity of below 450gCO<sub>2</sub>/kWh, even if it might be technically possible. They assert that the Applicant will not be able to achieve the Government 's proposed limit of 450gCO<sub>2</sub>/kWh and be compelled to cease operation from the coal Units 5 and 6, 2025 onwards.
- 5.3.9. The Applicant disputed this in its response to the WRs [REP3-024] and in its D5 submission [REP5-021]. The Applicant states that while it is not possible to be definitive about the economics of any generation method in 2025 there are many ways in which the emissions intensity rating of 450gCO<sub>2</sub>/kWh for Units 5 and 6 will be economic post 2025, including co-firing and CCS.

- 5.3.10. Turning to the assumption regarding the emissions intensity of the replacement generation capacity, CE in its D2 response [REP2-002] states that there is no evidence why the closure of Units 5 and 6 would lead to their capacity being displaced by capacity with an emissions intensity of 450gCO<sub>2</sub>/kWh. CE [REP2-002] quoted from the ES [APP-083] noting that it acknowledges there will be *"a major reduction in the GHG intensity for average UK grid electricity over the coming years"*. As such, CE [REP2-002] states that it is more appropriate to assume that any replacement capacity is consistent with such a scenario. say that the likely baseline scenario would be significantly lower than the baseline emissions intensity suggested in the ES. Furthermore, in its D5 submission [REP5-022] CE also states that the Applicant's baseline does not meet the EIA requirements because it does not demonstrate the best case and worst case in terms of the Proposed Development's climate impact.
- 5.3.11. Mr May [REP2-043] also presented doubts on the Applicant's assumptions and questioned whether the replacement capacity will have an emissions intensity as high as 450gCO<sub>2</sub>/kWh, especially in times of urgent, rapid technological change and substantial investment.
- 5.3.12. The ExA explored this in detail at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013], where the Applicant states that the baseline assessed in its ES [APP-083] reflects the realistic worst-case scenario, because of the way in which NGET operate the Stack arrangement. The ExA asked the Applicant to provide further explanation of the Stack arrangement which was advanced at D5 [REP5-021]. While we have reported on the responses received in respect to the operation of the Stack arrangement earlier in this Report, it is important to set them out again here with specific reference to their implications for climate effects.
- 5.3.13. The Applicant states [REP5-021] that NGET's Stack arrangement is the list of available generation in the market at a point in time, and the cheapest generator will have an advantage and will be dispatched (or purchased) by NGET first. The Applicant states that the Proposed Development would be more efficient compared to 'coal and older gas plants', and would sit high on the Stack, but not sit high enough on the Stack to displace current or future renewable generation.
- 5.3.14. The ExA asked NGET for clarification on this matter in FWQ ANC 2.3 [PD-014]. In response [REP6-022] NGET states that it dispatches generation to meet demand in merit order which is determined by the cost. For most renewable plants this figure is very low (essentially free) as there are no fuel costs. The merit order is therefore made up from all available renewable sources, followed by more expensive plant such as gas and coal. NGET [REP6-022] also clarified that if Units 5 and 6 of Drax Power Station were no longer operating, and if the level of renewables remained constant, a plant with similar efficiency and CO<sub>2</sub> intensity would replace Drax.

- 5.3.15. Given that the Applicant's baseline assumptions had been challenged right from the outset, the ExA requested CE to provide revised quantitative assessment of the Proposed Development's GHG emissions based on what CE considered to be realistic assumptions for the baseline scenario, at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013]. This information was submitted into Examination at D5 [REP5-022], including revised versions of Tables 15-13 and 15-15 adapted from the Applicant's ES [APP-083].
- 5.3.16. In summary, according to CE's revised baseline the Proposed Development would lead to a total increase in GHG emission of +238.7 million tonnes of carbon dioxide equivalent (MtCO<sub>2</sub>e). This represents +488% increase in total GHG emissions, and a +443% increase in emissions intensity when compared to CE's revised baseline [REP5-022]. As set out in Table 5.1 of this Report, and Table 15-15 of the ES [APP-083], this compares to a +90% increase in total GHG emissions, and -16% and -55% reduction in emissions intensity when assessed against the Applicant's proposed baseline [APP-083].
- 5.3.17. In its D6 response [REP6-013], the Applicant referred to its earlier submissions, in particular the D5 submission [REP5-021] and reiterated that the assumptions underpinning the baseline in ES [APP-083] presented the realistic worst-case scenario because of the way in which NGET's Stack operate. They summarised the reasons why the Proposed Development would not displace or block renewable sources of energy, but instead displace less efficient forms of fossil fuel generation.
- 5.3.18. The ExA considered that no new evidence was being presented by IPs. As such, at the ISH3 on Environmental Matters held on Tuesday 12 February 2019 [EV-020] and [EV-021], we stated that we did not seek additional evidence on these matters.

### **Conclusion**

- 5.3.19. The ExA has concerns regarding the appropriateness of different positions adopted and pursued by the Applicant and IPs regarding the emissions baseline. In considering the increase in GHG emissions and impact on climate change, the ExA has arrived at its conclusions in the following three matters:
- The first assumption underpinning the baseline, regarding the viability of coal-powered generation from Units 5 and 6 after 2025 at Government's proposed emission intensity limit of 450g CO<sub>2</sub>/kWh,
  - the second assumption underpinning the baseline, that replacement generation capacity would be of similar emission intensity of 450g CO<sub>2</sub>/kWh if Units 5 and 6 were to cease operating and be decommissioned, and
  - the balance between the significant adverse effect of the increase in total GHG emissions, and the reduction in GHG emissions intensity of the more efficient gas plants.
- 5.3.20. On the first assumption underpinning the baseline, regarding the viability of coal-powered generation from Units 5 and 6 after 2025 at

Government's proposed emission intensity limit of 450g CO<sub>2</sub>/kWh, we consider there is merit in the Applicant's arguments. Given this is the Government's applied emissions intensity limit, Drax and all other similar plants will have to adhere to it, irrespective of economic viability and available technology. We are not convinced that there is any reason to question or disagree with this assumption.

- 5.3.21. On the second assumption underpinning the baseline, that replacement generation capacity would be of similar emission intensity of 450g CO<sub>2</sub>/kWh if Units 5 and 6 were decommissioned, we are persuaded by the argument put forward by CE, Biofuelwatch and Mr May. Additionally, we consider that NGET's submission [REP6-022] casts doubt on the Applicant's assumption that NGET would always source the lost capacity from a similar fossil fuel plant operating at a similar intensity. On the contrary, NGET states that it would source the cheapest and most efficient form of energy first, which could be renewable energy sources owing to the minimal costs. NGET says that a plant with similar efficiency and CO<sub>2</sub> intensity would replace Units 5 and 6 at Drax if they were no longer operating, and if the percentage share of renewables in the UK energy mix remained constant. The Applicant has therefore also assumed that the level of renewables will remain constant, and this we believe is not a robustly supported assumption.
- 5.3.22. Accordingly, the ExA considers that the most likely outcome is that the baseline GHG emissions would be lower than that presented in the ES [APP-083], and consequently the percentage increase in total GHG emissions from the Proposed Development would be higher than +90%. The ExA is not persuaded by CE's alternative baseline figures either, which purports to a +488% increase in total GHG emissions. We acknowledge that establishing an accurate baseline is difficult to achieve given the wide range of assumptions, and the potential for rapid changes over a relatively long time period. In our view, the positions presented by the Applicant and CE present two ends of a spectrum, and a reasonable baseline is likely to be somewhere in between.
- 5.3.23. On the third point, regarding the balance between the significant adverse effect of the increase in total GHG emissions, and the reduction in emissions intensity of the more efficient gas plants, the Applicant's position throughout the Examination and set out in the ES [APP-083], is that the GHG emissions intensity of the Proposed Development is more relevant when assessing effect on climate, and not the total GHG emissions. Here, the Applicant argues that gas power is significantly more efficient than coal, and that the Proposed Development would generate over 170% additional energy from the site when compared with the generation capacity of the existing Units 5 and 6. This, it says, represents a betterment against the existing situation.
- 5.3.24. The Applicant's argument relies heavily on the assumption that the urgent need for additional fossil fuel generation capacity has been established in the NPSs. However, we have concluded in the previous section in this Chapter that the Proposed Development would make a minimal individual contribution to meeting need for more fossil fuel

generating capacity. As it is the ExA's view that the need for this particular Proposed Development is not established, its efficiency is somewhat irrelevant. NPS EN-1 in paragraph 3.1.1 draws a relationship between achieving energy security and at the same time dramatically reducing GHG emissions. Here again, the ExA's view is that the Proposed Development's individual contribution to meeting the policy objective for energy security is limited to system inertia and flexibility, and as such, the matter for consideration before the SoS is the total increase in GHG emissions and not the emissions intensity.

- 5.3.25. To summarise, the ExA considers that the opposing views presented by the Applicant and IPs regarding the emissions baseline present two ends of a spectrum, and a reasonable baseline is likely to be somewhere in between. Consequently, we believe that the percentage increase in total GHG emissions from the Proposed Development could be higher than +90% as reported in the ES.
- 5.3.26. The ExA concludes, that because the Proposed Development makes little individual contribution to meeting the identified need for some fossil fuel capacity, the assessment of GHG emissions should be based on its total emissions rather than on a comparison of emissions intensity.
- 5.3.27. There was no dispute by any party including the Applicant [APP-083] that a total increase in GHG emissions of +90% is a significantly adverse effect of the Proposed Development. As such, the ExA concludes the Proposed Development will not accord with the relevant NPSs, and would undermine the Government's commitment, as set out in the CCA2008, to cut GHG emissions.
- 5.3.28. The ExA considers that total GHG emissions are likely to be higher than that set out in the ES [APP-083] (as we have already stated above). It follows that the impact of the Proposed Development on climate is a greater severity of significant adverse effects. The ExA has accordingly given it greater weight in decision making and in the Planning Balance. The effect in the planning balance is negative.

## **5.4. CARBON CAPTURE STORAGE READINESS**

### **Background**

- 5.4.1. Paragraph 4.7.10 of NPS EN-1 states that all applications for new combustion plant which are of generating capacity at or over 300MW and of a type covered by the EU's Large Combustion Plant Directive should demonstrate that the plant is carbon capture ready before consent may be given. It goes on to state that the SoS must not grant consent unless this is the case.
- 5.4.2. The Application is accompanied by a CCR Statement [APP-067] updated at D3 [REP3-015] and at D7 [REP7-005], which undertakes a technical and economic assessment on space, retrofitting carbon capture technology, CO<sub>2</sub> storage and CO<sub>2</sub> transport. The Works Plans [APP-009] updated at D2 [REP2-007] and at D4 [REP4-003] identify land to the east of the existing power station as the location of CCS.

## Examination

- 5.4.3. Throughout the Examination, CE objected to the fact that the Proposed Development would only be CCS ready. In its WR [REP2-002], CE states that, in the event the SoS was minded to accept that the need for the development was established by the NPSs, and as such minded to make the Order, CCS should be made a condition of the Order designed to mitigate the Proposed Development's major climate impacts.
- 5.4.4. The ExA determined the matter warranted an oral discussion at the ISH1 on Environmental Matters on Wednesday 5 December 2018 [EV-010] to [EV-013]. Here, the Applicant stated that CCS provision formed no part of the Application and as such, falls outside of consideration by the ExA and the SoS. However, and in any event, the Applicant also stated that it was not feasible to provide CCS at this stage. This is because the technology was new and has to go through testing and financial modelling. Furthermore, it was the Government's intention not to roll out CCS until the 2030s, once such technologies had been tested and when funding was available. The Applicant stated that the Proposed Development was entirely in accordance with the NPSs and the EIA Regulations, which requires only CCS be ready.
- 5.4.5. Notwithstanding, the ExA questioned whether it was within the SoS's gift to make CCS a requirement of the Order. The Applicant was at pains to state that a requirement for CCS could not be placed on the DCO. Given the current early stages of CCS technology, the Applicant stated that the consent would not be bankable as it cannot be confirmed currently how much such technology would cost as the financial modelling was still being undertaken. As such, a requirement to provide CCS would endanger and undermine the delivery of the Proposed Development.
- 5.4.6. CE continued to object to this position, arguing that it is incumbent on the Applicant to provide CCS given the increase in GHG emissions that would occur from the Proposed Development, and that it would in its view be unviable to provide it at a later stage thus it would never be provided. At the end of the discussion on this topic, the ExA considered it did not need to debate it further in the Examination.
- 5.4.7. YWT in its RR [RR-320] states that CCS should not be considered an acceptable solution for the increase in carbon emissions because the technology is untested. The ExA posed this in WQ ANC 1.16 [PD-006]. The Applicant responded [REP2-035] that it was not correct that the technology had not been tried; and provided a list of 38 sites around the world where CCS existed. YWT did not respond further on the matter in the Examination and the ExA had no obvious reason to question the Applicant's evidence in this regard.
- 5.4.8. The EA states in its RR [RR-292] that the Applicant's CCR Statement [APP-067] was insufficient in detail. The ExA raised this with the Applicant in WQ ANC 1.7 [PD-006] to which the Applicant responded [REP2-035] that it was in continuing discussions with the EA which would lead to an updated CCR Statement; this being submitted into the Examination at D3 [REP3-015]. The EA confirmed in its D6 response

[REP6-018] to the ExA's FWQ CO 2.1 [PD-014] that it was satisfied with the updated version but raised privately with the Applicant another issue regarding the operation of the carbon capture plant and how it would cope with the on/off nature of OCGT operations. The Applicant tabled the final version of the CCR Statement at D7 [REP7-005].

- 5.4.9. The SoCG signed between the Applicant and the EA submitted at D9 [REP9-009] and with NYCC and SDC submitted on the final day of the Examination [AS-136] confirms the position that there are no foreseeable barriers to carbon capture with regards to space allocation and technical feasibility. There are no outstanding matters to be resolved with regard to CCS readiness.

### **Conclusion**

- 5.4.10. While acknowledging the concerns raised by CE and YWT in respect to the absence of actual provision of CCS, and the benefits it may have made in mitigating the harm identified above, the ExA accepts the Applicant's explanation that technological infancy of CCS as well as concerns over the availability of funds or indeed of any financial modelling for its provision could seriously endanger and undermine the delivery of the Proposed Development. As such, the Proposed Development must be determined on the basis that it would be CCS ready only. The ExA does not therefore recommend that the SoS amends the Order to require CCS be provided.
- 5.4.11. Taking only the CCS readiness matter into consideration here, the ExA accepts that the Proposed Development would meet with the requirements of NPS EN-1 and the EIA Regulations in this regard. The ExA agrees with the Applicant in that sufficient quantum of land for CCS would be provided to meet future provision.
- 5.4.12. We are therefore content that the Proposed Development adequately makes provision for CCS readiness. It accords with all legislation and policy requirements and that CCS readiness is adequately provided for and secured by Requirements 22 and 23 of the Recommended DCO; the latter of which will ensure the situation is subject to monitoring to inform its future provision. Because we find that the Proposed Development accords with the NPSs and the EIA Regulations, we conclude a neutral effect on this matter in the planning balance.

## **5.5. COMBINED HEAT AND POWER READINESS**

### **Background**

- 5.5.1. Paragraph 4.6.6 of NPS EN-1 states that any application to develop a thermal generating station under s36 of the Electricity Act 1989 must either include CHP readiness or contain evidence that the possibilities for CHP have been fully explored to inform the SoS's consideration of the application. This should be through an audit trail of dialogue between the Applicant and prospective customers. The same principle applies to any thermal power station which is the subject of an application for development consent under the PA2008.

- 5.5.2. Paragraph 4.6.7 of NPS EN-1 states that developers should consider the opportunities for CHP from the very earliest point and it should be adopted as a criterion when considering locations for a project.
- 5.5.3. The Application is accompanied by a Combined Heat and Power Statement [APP-066] updated at D3 [REP3-014], which undertakes an assessment of potential heat users, a heat export feasibility study and an assessment of BAT. It concludes that while the provision of heat or steam is not viable at this stage, the CHP assessment demonstrates that the Proposed Development meets the BAT tests and would be designed and built as CHP ready.

### **Examination**

- 5.5.4. In its WR [REP2-041], the EA states that CHP matters are subject to the EP regime. While it raised no specific concerns, the EA nevertheless states that insufficient information including a site layout plan had been provided to demonstrate the Applicant's assertion that sufficient space existed for CHP. It further states that heat loads need to be agreed with the EA. We posed these concerns in WQ ANC 1.7 [PD-006]. The Applicant responded [REP2-035] that it was in continuing discussions with the EA which would lead to an updated CHP Statement; this being submitted into the Examination at D3 [REP3-015]. The EA confirmed in its D6 response [REP6-018] to the ExA's FWQ CO 2.2 [PD-014] that it was satisfied with the updated version.
- 5.5.5. The Applicant's updated draft DCO submitted at D2 [REP2-014] deleted Requirement 21 in respect to CHP. At the ISH2 on the draft DCO held on Thursday 6 December 2018 [EV-014], the ExA requested an explanation. The Applicant responded, confirmed in writing its D4 submissions [REP4-011] that it felt the Requirement overlapped with the EP regime and as such it was not necessary.
- 5.5.6. The ExA disagreed and made a request for the Requirement to be reinserted in our FWQ DCO 2.7 [PD-014], citing our reasons for doing so in the question concerned. The Applicant responded [REP6-013] by reiterating its position, but that it would not object to the Requirement being re-inserted subject to the decision of the SoS. At the same time, the Applicant provided a form of wording they would wish to see should the SoS decide to include a CHP Requirement in the DCO. The ExA published its schedule of changes to the draft DCO [PD-016] formally requesting the Applicant's suggested wording be re-inserted as Requirement 28 to avoid implications of changes to other Requirements, and this was accepted and re-inserted as such in the final draft DCO submitted at D9 [REP9-004].
- 5.5.7. The SoCG signed between the Applicant and the EA submitted at D9 [REP9-009] and with NYCC and SDC submitted on the final day of the Examination [AS-136] confirms the position that there are no foreseeable barriers to CHP readiness with regards to space allocation and technical feasibility. There are no outstanding matters to be resolved with regard to CHP matters.



## **Conclusion**

- 5.5.8. We are content that the Proposed Development adequately makes provision for CHP. It accords with all legislation and policy requirements and that CHP is adequately provided for and secured by Requirement 28 of the Recommended DCO. The effect in the planning balance is neutral.

## **5.6. TRAFFIC AND TRANSPORT**

### **Background**

- 5.6.1. Paragraph 5.13.2 of NPS EN-1 states that the consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 states that the Applicant should undertake a transport assessment for any project likely to have a significant transport implication, and where appropriate the Applicant should prepare a travel plan.
- 5.6.2. ES Chapter 5 [APP-073], supported by appendices [APP-090] to [APP-097], examines the effect of the Proposed Development on traffic and transport matters. The ES [APP-073] study area assesses the effect of the Proposed Development on major arterial roads in the vicinity of the site and on junctions. It also applies a sensitivity scale and assessment of the effects on traffic flows, delays, road safety, fear and intimidation, severance and pedestrian amenity.
- 5.6.3. As stated in Chapters 2 and 4 of this Report, the Proposed Development would be constructed in two stages. It is anticipated that Stage 1 would be constructed between 2020 to 2022. On completion of Stage 1, there would be a minimum of a 12-month gap in 2023 before works begin on Stage 2 between 2024 and 2026.
- 5.6.4. The ES [APP-073] anticipates a peak period of number of trips per day for the entire site as taking place between months 19 to 22 of Stage 1 of the Proposed Development, with traffic connected with Unit X, the battery storage installation and electricity connections predicted to amount to over 400 car trips per day. This would peak again at months 65 to 68 of Stage 2 of the project, but because this would concern only the construction of Unit Y with all other works completed, daily car trips would peak at just over 350 per day.
- 5.6.5. In respect of heavy goods vehicles (HGV)s, the ES [APP-073] states that there would essentially be two peak periods. Firstly, months 10 to 12 would see around seven HGV trips per hour principally connected with the construction of Work No 1 (Unit X) and Work No 3 (battery storage). The ES [APP-073] predicts the months that follow would see a consistent number of around four HGV trips per hour as the battery connection works cease. But in months 19 to 23, numbers peak again as the Work No 7 (gas pipeline) begins where, for month 22, HGV traffic is predicted to peak at nearly nine trips per hour. For Stage 2, peak months would be months 65 to 67 where HGV trips are predicted to be just short of six per hour. Thus months 19 to 22 would be the busiest for traffic generation for the Proposed Development.

- 5.6.6. The ES [APP-073] confirms that all construction materials will arrive at the site by road. Construction vehicles would be instructed to use the M62 and exit at J36. There, it would follow the A614 and the A645 which would lead directly to Drax Power Station. Abnormal indivisible loads (AIL) deliveries would be unloaded at the Port of Goole and be transported via the Goole bypass, the M62 and then the A645.
- 5.6.7. The ES [APP-073] states that there would be likely significant negative effects from the Proposed Development at Stages 1 and 2. These would lead to increased vehicular delays at the junctions of the A614/A645 and the A614 with Airmyn Road, as well as worsening junction performances at other surrounding roads. However, the ES [APP-073] states these effects would be temporary and not long-term. The ES [APP-073] identifies no likely significant effects on other matters such as to traffic flows, road safety or pedestrian amenity.
- 5.6.8. Construction traffic would be subject to the measures of the CWTP and CTMP, which would seek to minimise the effect on the local highway network and the local community. This would, amongst other things, control the timings for deliveries for the construction period, which the ES [APP-073] predicts would arrive during the morning and evening periods only. An Outline CWTP [APP-090] and Outline CTMP [APP-091] and were submitted with the Application and updated during the Examination at D2 [REP2-021] and [REP2-022], and D4 [REP4-013] and [REP4-014] respectively. The final CWTP and CTMP are secured by Requirements 19 and 18 of the Recommended DCO.
- 5.6.9. The operational Stage 3 works would result eliminate the need for the transportation, principally by rail, of coal to the site. Decommissioning would be controlled by the Decommissioning Traffic Management Plan which is secured by Requirement 27 of the Recommended DCO.
- 5.6.10. Accordingly, the ES [APP-073] concludes that likely significant effects on the local highway network caused by the construction Stages 1 and 2 of the Proposed Development would not be long-term or permanent, and that adequate mitigation is secured through the CTMP and CWTP.

### **Examination**

- 5.6.11. The LIR [REP2-047] reported that while NYCC and SDC raised no specific objection to the scope and assessment in the ES [APP-073], it had not at that point approved the Outline CTMP [APP-091] and Outline CWTP [APP-090], which NYCC and SDC determined was critical to the acceptance of the Application in this regard. The LIR [REP2-047] acknowledged that the Requirements in the draft DCO [AS-012] did adequately secure the approval of such documents.
- 5.6.12. The ExA requested NYCC and SDC expand further on their comments on the Outline CTMP [APP-091] and Outline CWTP [APP-090] in our WQs TT 1.8 and TT 1.9 [PD-006]. NYCC and SDC responded [REP2-047] that in respect to the Outline CTMP [APP-091] it had yet to agree to the design of the footbridge but that it was continuing to review whether the draft DCO [AS-012] adequately secured this process. NYCC and SDC

confirmed also that it was content with the Outline CWTP [APP-090]. The Applicant updated the Outline CTMP [REP2-022] and Outline CWTP [REP2-021] at D2 to reflect those ongoing discussions with NYCC and SDC on the footbridge. No further concerns were raised by NYCC and SDC on this matter.

- 5.6.13. At the CAH1 held on Thursday 6 December 2018 [EV-015], Mr Watson stated, on a CA matter, that he failed to understand the request for the size of the land needed for Work No 9B (construction laydown) because the Outline CTWP [REP2-021] indicated that all construction deliveries would be to the west of New Road, not the east. The Applicant responded [EV-015] and [REP4-010] stating that the Outline CWTP [REP2-021] may contain an error. The Applicant subsequently updated the Outline CWTP and Outline CTMP for D4 [REP4-013] and [REP4-014] respectively to provide clarity on the access of HGVs to the Laydown areas to the east and west of New Road, and to replace some figures and to align the description of the Proposed Development. Mr Watson reiterated these concerns in a letter received the day before the close of the Examination [AS-131] but did not comment on whether the Outline CWTP [REP4-013] and Outline CTMP [REP4-014] partially or wholly addressed his concerns.
- 5.6.14. The ExA noted at the outset that there was little information as to how construction traffic for Work No 7 (gas pipeline) and Work No 6 (AGI) was to be planned for, as neither the ES [APP-073] nor the Outline CTMP [APP-091] were particularly informative on the matter. This point also appears to have been of a concern to NPC [RR-239], which raised concerns over a potential use of Church Dike Lane and Brier Lane for access to those Works via Rusholme Lane. NPC suggested a solution whereby construction traffic used a more appropriate route via Carr Lane and Main Road as a way of circumventing Drax village, which would have the effect of avoiding Newland village altogether.
- 5.6.15. The ExA posed the above concerns to the Applicant in WQ TT 1.3 [PD-006]. The Applicant responded setting out a route plan which was appended to an updated Outline CTMP submitted at D2 [REP2-022], and its written response to the question [REP2-035] confirmed that Brier Lane would not be used by contractors for the construction of Work No 7 (gas pipeline) and Work No 6 (AGI) at Rusholme Lane. A SoCG signed between the Applicant and NPC was submitted at D3 [REP3-019] in which the proposed construction traffic routing as proposed in the Outline CTMP [REP2-022] was agreed.
- 5.6.16. In their RRs, CRT [RR-235] and the Commercial Boat Operators Association [RR-288] state that they wished to promote the use of the River Ouse and the Drax Jetty for river traffic. Both RRs requested assurances that other forms of construction traffic had been adequately considered, and that the ExA be satisfied with Section 4.10 of the ES [APP-073] which discounts the use of the river owing to environmental effects; costs; and limited availability owing to draught and tidal restrictions. The Commercial Boat Operators Association [RR-288] also referred to the Government's "water preferred policy" without direct reference to a specific document, and we have assumed it means the

document authored by HwE which we summarise in Chapter 3 of our Report.

- 5.6.17. In our WQs TT 1.5 and TT 1.6 [PD-006], we asked the Applicant to clarify, amongst other things, whether Drax Jetty could have been used for other construction deliveries, and whether the Port of Goole could be utilised for other construction materials other than AILs.
- 5.6.18. The Applicant responded [REP2-035] stating that Drax Jetty would need significant engineering and environmental works to be capable of being used for construction and AIL materials; particularly because it would need to be rebuilt as it would not support loads exceeding 100 tonnes. As such, it was economically not practical to do so. Additionally, the Applicant states that Drax Jetty would provide limited benefit as a result of the limited draught restricting the vessels that could be used and tidal restrictions on the hours of use. While the AILs would use the Port of Goole, the Applicant would consider measures to improve the use of waterborne transport where the loads can be handled by Port of Goole and it is the most efficient way to deliver materials.
- 5.6.19. The ExA asked clarification questions [PD-006] on matters pertaining to the assessment methodology, the assessment of Rushmore Lane for AILs, and for the Applicant to respond to the RRs of NYCC [RR-309] and SDC [RR-315] that sought assurances of the suitability of the Outline CTMP [APP-091] and Outline CWTP [APP-090]. The Applicant's responses submitted at D2 [REP2-035] were deemed to be satisfactory and the ExA raised no further main questions on transport and traffic matters during the Examination.
- 5.6.20. The SoCGs signed between the Applicant and NYCC and SDC [AS-136], and between the Applicant and HwE [REP9-010] confirms that it is agreed that the scope and assessment of the ES [APP-073] are acceptable. It is further accepted that the Proposed Development would generate additional vehicle movements on the highway network; however, these additional movements are of a temporary nature and therefore, the approach taken by the Applicant and the extent of the assessment is satisfactory. AIL movements have been adequately assessed; with the movement of AILs for the Proposed Development utilising the Port of Goole considered to be acceptable having regard to HwE's water preferred policy document.
- 5.6.21. All concerns related to traffic management during Stages 1,2 and 3 can be mitigated through the CWTP and CTMP which are secured by Requirements 19 and 18 of the Recommended DCO. The updates to the Outline CWTP and CTMP submitted at D4 [REP4-013] and [REP4-014], and the changes to the draft DCO submitted at D7 [REP7-003] are also agreed [AS-136] and deemed sufficient to demonstrate that the Proposed Development would not result in unacceptable impacts in traffic and transportation terms.

## **Conclusion**

- 5.6.22. The ExA is satisfied on the explanation given by the Applicant in respect to the inability to further utilise Drax Jetty, and that the use of the Port of Goole for AILs complies with HwE's water preferred policy guidelines. This addresses the concerns of CRT and the Commercial Boat Operators Association.
- 5.6.23. The ExA notes there would be considerable construction traffic generated by the Proposed Development, which would undoubtedly cause a nuisance and disruption to users of the local highway network whom may experience longer journey times, as well as the general inconvenience to local residents.
- 5.6.24. However, it would not be a permanent arrangement, and the periods where the traffic flows would be higher would be restricted to a few months during the construction period. The ExA considers that the construction of such a large project would inevitably generate construction and operative traffic, and this is a necessary requirement. However, the ExA is satisfied that the CTMP and CWTP, as well as a Decommissioning Traffic Management Plan, which are adequately secured by Requirements 18, 19 and 27 of the Recommended DCO, would ensure any disturbance is controlled and minimised. The effect in the planning balance is neutral.

## **5.7. AIR QUALITY**

### **Background**

- 5.7.1. Air quality related matters are discussed here, and also under individual planning sections on Biodiversity, CHP readiness and CCS readiness. Matters relating to HRA and air quality are also discussed in Chapter 6 of this Report. This Section does not discuss carbon and GHG emissions; these are discussed in Section 5.3 above.
- 5.7.2. The Paragraph 4.10.2 of NPS EN-1 sets out the separate functions between planning and pollution control systems in respect to air quality matters. It states that the planning system is concerned with the use of land and improving the natural environment and public health; whereas pollution control is concerned with preventing pollution and the use of measures to prohibit or limit the releases of substances to the environment and ensures that ambient air and water quality meet standards.
- 5.7.3. Paragraph 4.10.3 of NPS EN-1 states that the SoS 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. It also states that the SoS is entitled to assume that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced and that the SoS should seek to complement but not duplicate them as part of the DCO process.

- 5.7.4. Paragraph 4.10.8 makes it clear that the SoS should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted. For this reason, the Applicant has sought early engagement with the EA.
- 5.7.5. Part 5 of NPS EN-1 details the potential impacts of energy infrastructure including air quality and emissions. Paragraph 5.2.1 of NPS EN-1 advises that the construction, operation and decommissioning of infrastructure development can "*involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside.*" Paragraph 5.2.7 of NPS EN-1 states that an assessment should be undertaken as part of the ES.
- 5.7.6. The air quality assessment in ES Chapter 6 [APP-074], as supported by appendices [APP-098] to [APP-100], identifies the likely significant effects of the Proposed Development on air quality and its potential impacts on both human and ecological receptors, the AQMA in Selby, and designated ecological sites. The air quality within the study area is mainly influenced by existing emissions from the existing Drax Power Station complex, traffic emissions, and emissions from other industrial activities.
- 5.7.7. The ES [APP-074] sets out the main impacts during Stages 1 and 2 relating to dust generated during construction and exhaust emissions from construction plant equipment and construction traffic. This considers predicted numbers of construction plant and vehicles, duration of activities and proximity of sensitive receptors. The ES [APP-074] states that the effects of construction are not deemed to be significant and would be mitigated through the Outline CEMP [APP-133], updated at D2 [REP2-025], D4 [REP4-005], D6 [REP6-005] and D8 [REP8-006] and its associated documents, and the Outline CWTP [APP-090] updated at D2 [REP2-021] and D4 [REP4-013] and Outline CTMP [APP-091] updated at D2 [REP2-022] and D4 [REP4-014].
- 5.7.8. ES Chapter 6 [APP-074] and Appendix 6.3 [APP-100] presents a quantitative assessment of stack emissions resulting from the operation (Stage 3) of the Proposed Development using various scenarios (see below for detail). It includes dispersion modelling and stack height sensitivity testing [APP-100]. The assessment considers the dispersion of air emissions within a study area of up to 15km from the Proposed Development. It assesses impacts associated with both OCGT and CCGT operation of the proposed new gas fired units. It also assesses impacts associated with both secondary abatement technology applicable to the CCGT technology (namely Selective Catalytic Reduction (SCR)) and primary abatement (namely operation controls). The DCO allows for either scenario as the need for SCR will be determined by the EA as part of the separate EP regime process. The modelling [APP-100] assumes as a worst-case scenario that the new gas fired generating Units X and Y, run at full load continuously up to a capacity of 3,800MW. The air quality assessment also assesses impacts from increased emissions occurring cumulatively with other developments located within 15km of the Power Station Site.

- 5.7.9. A summary of the modelling scenarios included in the ES are below:
- Do Nothing: 2 coal unit + 4 biomass units;
  - scenario A1: 4 biomass units + 4 turbines in CCGT mode + 12 Gas Receiving Facility (GRF) boilers;
  - scenario A2: 4 biomass units + 4 turbines in OCGT mode + 12 GRF boilers;
  - scenario B: 4 biomass units + 4 turbines in OCGT mode with abatement of nitrogen oxides (NO<sub>x</sub>) (i.e. SCR) + 12 GRF boilers;
  - scenario C: 4 biomass units + 4 turbines in CCGT mode + 12 GRF boilers, Eggborough and Thorpe Marsh CCGT without SCR; and
  - scenario D: 4 biomass units + 4 turbines in OCGT mode with NO<sub>x</sub> abatement (SCR) + 12 GRF boilers, Eggborough and Thorpe Marsh CCGT with SCR.
- 5.7.10. The ES [APP-074] confirms that Scenarios A1 and C provide the worst case for the Proposed Development alone (A1) and cumulatively (C) in respect of nitrogen oxides (NO<sub>x</sub>) emissions and impacts on ambient concentrations of NO<sub>x</sub> and nitrogen dioxide (NO<sub>2</sub>). It is noted that in the CCGT assessment scenarios where SCR is not used, no ammonia (NH<sub>3</sub>) would be emitted.
- 5.7.11. The ES [APP-074] states that during Stage 3 potential impacts from emissions of carbon monoxide (CO), sulphur dioxide (SO<sub>2</sub>), NH<sub>3</sub>, particulate matter (PM<sub>10</sub>) and hydrogen chloride (HCl) gas are assessed to be not significant on residential receptors. There is very low risk of exceedance of the air quality standards, whether long term or short term and no significant health effects are anticipated as a result of the Proposed Development. The effects of the change in pollutant concentrations on ecological receptors from emissions of NO<sub>x</sub>, NO<sub>2</sub> and NH<sub>3</sub> is reported in ES Chapter 9 [APP-077]. This is summarised in the section on Biodiversity in this report.
- 5.7.12. The impacts during decommissioning are not likely to have any significant effects with an appropriate Decommissioning Environmental Management Plan (DEMP) in place.
- 5.7.13. Pollution control matters including monitoring during the operation of the Proposed Development are subject to the EP regime, and emissions would be controlled to meet the requirements of the IED. The SoCG with the EA [REP9-009] confirmed that an EP variation application rests with the EA, and EA is in the process of carrying out a full technical assessment of this proposal.

### **Examination**

- 5.7.14. In its RR [RR-292] and WR [REP2-041], the EA states that, in respect of stack design parameters, the dimensions for these structures on site will be considered in line with the technical assessment submitted with the EP application.
- 5.7.15. In response, the Applicant states [REP1-013] that a stack sensitivity assessment [APP-100] was completed as part of the air quality technical

assessment. This concluded that a minimum stack height of 120m provides adequate dispersion to reduce the impacts of the operation of Units X and Y to negligible or slight adverse levels and the Dispersion Modelling presented in ES Chapter 6 [APP-074] and [APP-100] was undertaken with the stack heights for Units X and Y set at 120m. The Applicant confirmed that the methodology and assumptions used were agreed with the EA and the stack sensitivity assessment is robust.

- 5.7.16. In WQs AQ 1.11 [PD-006], we noted that Schedule 13 of the Applicant's draft DCO [APP-020] and [AS-012] identified the stack height to be a 'maximum' of 120m Above Ground Level (AGL) and thus implied that the stack could be constructed at a height less than 120m AGL. No minimum height had been specified in the draft DCO. We also requested that the Applicant confirm if the recommendation of 120m as stated in the Air Dispersal Modelling document [APP-100] is 120m AGL or 120m AOD. In response, the Applicant [REP2-035] confirmed that the stack height modelled was at a height of 120m AGL, with the cooling towers modelled at 114m AGL.
- 5.7.17. The Applicant submitted a request to the ExA at D3 [REP3-022] to accept a number of proposed design changes. The proposed change to the stack height was in response to new information on the existing site topography which allowed a more refined height AOD and AGL to be determined for the main stack, the bypass stack, the finished floor level in m AOD, and the heat recovery steam generators. A revised draft DCO was also submitted at D3 [REP3-007] and [REP3-008], which in addition to the proposed changes to design parameters, included additional tables (Tables 14 and 16) to Schedule 13 of the revised draft DCO [REP3-007] and [REP3-008] to allow for minimum parameters for the stacks, as requested by the ExA in the WQs [PD-006].
- 5.7.18. The ExA requested the Applicant set out the changes and the reasons for them at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013]. The Applicant did so, and further states that the proposed changes are minor and as such are non-material, and do not alter the scope and assessment within the ES [APP-071]. The ExA requested further information which underpinned the Applicant's assertion on the non-materiality of the changes [PD-012]. The Applicant duly obliged at D5 and included an Air Quality Technical Note [REP5-019] with their submission. This technical note presented the rerun air quality modelling results using the parameters changes, alongside the original modelling results from the ES. The technical note states that: *"the results show that, taken across all meteorological years, the slight increase in stack height results in a marginal reduction in the impacts of the repowered units but this has no significant impact on the conclusions of the assessment and does not change the significance of effects reached in the assessment."* The ExA concluded that the change was non-material and accepted it into the Examination [PD-015].
- 5.7.19. In WQs and FWQs [PD-006] and [PD-014], the ExA sought clarification on the likely timing and choice of abatement method (including SCR), together with the EP and the delivery of BAT. The Applicant responded



[REP6-013] that they are considering both primary abatement which is to operate the plant at lower outputs in order to meet the NO<sub>x</sub> emission limits, and secondary abatement, such as SCR. This is also described in Section 3.2 of ES Chapter 3 [APP-071], as updated by [REP6-003], which indicates that the draft DCO seeks flexibility for the Proposed Development to operate with either option. The Applicant also states that it intends to vary the submitted EP variation application to accommodate both options. The Applicant confirmed that it had assessed both forms of abatement, with or without SCR, in the ES [APP-074] and the HRA [APP-134], updated at D3 [REP3-017] and D6 [REP6-006].

- 5.7.20. At D4 of the Examination, it was highlighted that in December 2018 DEFRA made the decision that the BReF Achievable Emission Level (AEL) document for new large combustion plant would apply to high efficiency CCGT generating stations, such as the Proposed Development [EV-010] to [EV-013]; [REP4-012] and [REP6-013]. The Applicant [REP6-013] confirmed that they had anticipated this potential outcome by including SCR as a means of reducing NO<sub>x</sub> in its DCO application and in the ES and HRA. Following DEFRA's announcement, the Applicant confirmed their intention to apply to vary the EP variation application to accommodate both primary and secondary abatement options [REP6-013]. The Applicant stated that they intended to submit this in February/March 2019 [REP7-015] and once issued, emissions from either compliance route would be regulated by the EA through the EP.
- 5.7.21. The SoCG signed between the Applicant and the EA [REP-009] confirms that the EA agrees that the ES [APP-074] has adequately assessed air quality matters; that the EP regime will control operational emissions based on BAT principles which cannot exceed air quality strategy objectives required by the Environment Act 1995; and that the SoS can be satisfied that the type and nature of this application is capable of being adequately regulated under EP regime and not aware of anything that would preclude the granting of an EP.
- 5.7.22. The signed SoCG between the Applicant and NE [REP1-004] confirms that NE agree with the scope, baseline, methodology, identified likely effects and mitigation in the ES [APP-074]. NE agree that taking account of proposed mitigation, including that set out in the Outline CEMP [APP-133] and updated with the final version [REP8-006], secured by Requirement 17 of the Recommended DCO, the Proposed Development would not result in unacceptable air quality impacts upon ecological receptors alone or cumulatively with other relevant development proposals either during construction or operation. NE also agree that the operational emissions from the Proposed Development would be controlled through the EP regime administered by the EA. The LIR [REP2-047] confirmed acceptance of the scope and assessment of the ES [APP-074] and that the Recommended DCO adequately secures mitigation.
- 5.7.23. The SoCG signed between the Applicant and NYCC and SDC [AS-136] also agrees that the CEMP, secured by Requirement 17 of the Recommended DCO, adequately secures appropriate mitigation and that the Proposed Development would not result in unacceptable impacts

upon air quality alone or cumulatively with other relevant development proposals either during construction or operation.

### **Conclusion**

- 5.7.24. The ExA is satisfied that there would be no significant negative effects caused from the construction and operation stages of the Proposed Development on sensitive air quality receptors. The EP regime will ensure that the emissions from the Proposed Development would be controlled, and continually occurring at the limit set in the IED / BReF conclusions and or recommended emissions ceiling.
- 5.7.25. We are satisfied that the Proposed Development would accord with the relevant NPSs. Requirements 5 (detailed design), 17 (CEMP), 26 and 27 (decommissioning plans) would ensure mitigation identified in the ES [APP-069] to [APP 087] is carried out are adequately carried out, and these are secured in the Recommended DCO. Schedule 13 in the Recommended DCO adequately secures the minimum and maximum stack height, as assessed in the ES. Overall, the effect in the planning balance is neutral.

## **5.8. NOISE AND VIBRATION**

### **Background**

- 5.8.1. Section 5.11 of NPS EN-1 refers to the Government's policy on noise within the Noise Policy Statement for England. Paragraph 5.11.8 states that construction projects should have the quietest cost-effective plant available; contain noise within buildings wherever possible; optimise plant layout to minimise noise emissions; and, where possible, utilise landscaping, bunds or noise barriers to reduce noise transmission. This message is primarily repeated in Paragraph 2.7.5 of NPS EN-2. Paragraph 2.20.4 of NPS EN-4 in respect to AGI states that these may be located in quiet rural areas, and therefore the control of noise from these facilities is likely to be an important consideration.
- 5.8.2. ES Chapter 7 [APP-075], supported by Appendices [APP-101] to [APP-103], examines the effect of the Proposed Development on noise and vibration matters. It states that the Stage 1 works could lead to some degree of noise disturbance at receptors located close to the construction works and within the surrounding road network used by construction traffic. No significant negative effects are predicted on residential receptors subject to the mitigation measures set out in the CEMP which is secured by Requirement 17 of the Recommended DCO. The predicted vibration effects on sensitive receptors would also not be significant.
- 5.8.3. The ES [APP-075] states that for Stages 2 and 3, the operational noise assessment of the simultaneous operation of Unit X and Y has the potential to be significant in its effects at different sensitive receptor locations during the daytime and night time, with the noise modelling illustrating that the dominant noise levels would be located at the stack terminations. However, acoustic attenuators would mitigate the harm; and these are secured by Requirement 17 of the Recommended DCO.

The ES [APP-075] reports that vibration from Stages 2 and 3 works would be imperceptible. Decommissioning works would be similar to those that will be assessed for construction.

- 5.8.4. Accordingly, as subject to the mitigation measures set out in Requirement 17 (CEMP) and 21 (operational noise) of the Recommended DCO, the ES concludes that the Proposed Development would not have any significant negative effects from noise and vibration. The effects caused to local ecological receptors are assessed separately in the biodiversity section of this Report.

### **Examination**

- 5.8.5. No IPs raised any concerns in respect to noise and vibration matters. As a precaution, the ExA requested in our WQ NV 1.1 [PD-006] that NYCC and SDC respond on their view on the scope and assessment with the ES [APP-075] and Requirement 20 in the draft DCO [AS-012] (Requirement 21 of the Recommended DCO). NYCC and SDC responded that it was content with both. No further questions were asked during the Examination.
- 5.8.6. The LIR [REP2-047] states at the outset that NYCC and SDC were content with the scope and assessment in the ES [APP-075] and that adequate mitigation is secured in the Recommended DCO. The SoCG signed between the said parties [AS-136] repeats and reinforces the Councils' outset view.
- 5.8.7. The SoCG signed between the Applicant and the EA [REP9-009] and NE [REP1-004] states that the noise mitigation strategy as identified in the ES [APP-075] is suitable and meets with BAT principles to minimise noise impacts from the Proposed Development, and that operational noise impacts would not give rise to significant impacts. The parties agree that the scheme is of a type and nature that would be capable of being adequately regulated under the EP regime.

### **Conclusion**

- 5.8.8. We are satisfied that the Proposed Development would have no significant negative effects from noise and vibration from construction, operation and decommissioning activities. The Proposed Development would accord with all legislation and policy requirements and noise and vibration matters are adequately provided for and secured by Requirements 17, 21 and 26 of the Recommended DCO. The effect in the planning balance is neutral.

## **5.9. HISTORIC ENVIRONMENT**

### **Background**

- 5.9.1. Section 5.8 of NPS EN-1 is most relevant to the historic environment. Paragraph 5.8.1 states that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment. Paragraph 5.8.2 of NPS EN-1 describes the historic environment as including all aspects of the

environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, landscaped and planted or managed flora. Those elements of the historic environment that hold value to this and future generations because of their historic, archaeological, architectural or artistic interest may be any building, monument, site, place, area or landscape, or any combination of these.

- 5.9.2. Paragraph 5.8.4 states that there are heritage assets with archaeological interest that are not currently designated as scheduled monuments, but which are demonstrably of equivalent significance. Furthermore, in paragraph 5.8.5 the policy considers that the absence of designation for such heritage assets does not indicate lower significance. The paragraph also says that if the evidence before the SoS indicates to it that a non-designated heritage asset may be affected by the Proposed Development then the heritage asset should be considered subject to the same policy considerations.
- 5.9.3. Paragraphs 5.8.8 to 5.8.10 require the Applicant to fully assess the significance of the heritage assets affected by the Proposed Development and ensure that the extent of the impact can be adequately understood from the application and supporting documents.
- 5.9.4. Section 4.5 of the NPS-EN1 talks about the importance of good design for energy infrastructure, including criteria such as, visual appearance, functionality and fitness for purpose, sustainability, efficient use of natural resources, and efficient construction and operation. It also says that Applicants should be able to demonstrate in their Application documents how the design process was conducted and how the proposed design evolved, including the reasons why the favoured design choice has been selected. It is acknowledged that the nature of many energy infrastructure developments will often limit the extent to which it can contribute to the enhancement of the quality of the area. Furthermore, it says that in considering applications, the SoS should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.
- 5.9.5. ES Chapter 8 [APP-076], supported by Appendices [APP-104] to [APP-106], examines the effect of the Proposed Development on the historic environment and is intended to be read with particular reference to Historic Environment Desk-based Assessment [APP-104]. The historic environment assessment has gathered information through a desk-based study and surveys of the site and its immediate surroundings. A total of 509 heritage assets are present within 10km of the Proposed Development. These heritage assets comprise 19 scheduled monuments, 11 Grade I listed buildings, 17 Grade II\* listed buildings, 440 Grade II listed buildings, 13 conservation areas and nine non-designated heritage assets. These are shown in the ES. One of the nine non-designated heritage assets lies on the site boundary and is a historical field boundary.

- 5.9.6. The ES [APP-076] states that Stage 1 works may negatively impact the setting of heritage assets closest to the site, including the scheduled monument of the Drax Augustinian Priory and Scurff Hall Moated Site. Due to the temporary nature of the effect it is not predicted to be significant. Archaeological evaluation trenching has identified potentially significant below ground archaeological remains at the location of the AGI. The ES [APP-076] says that ground disturbance from the construction of the gas pipeline and related structures would disturb similar assets of the same significance. Mitigation including a 'strip, map and record' exercise has been proposed, resulting in a conclusion of no likely significant residual effects.
- 5.9.7. The ES [APP-076] sets out that Stage 2 works may also negatively impact the setting of heritage assets due to the visibility of stacks, creating unwanted visual distraction from the Drax Augustinian Priory. The ES concludes that no significant residual effects are predicted because the North Station Wood and connecting the woodland belt would provide screening. The Stage 3 and 4 works is unlikely to produce any additional impact on above or below ground heritage assets.
- 5.9.8. The ES [APP-076] concludes that the likely significant effects on below-ground archaeological would remain associated with ground moving activities would be reduced to negligible following mitigation. While the settings of designated heritage assets would be subject to less than substantial harm, enhancement mitigation has been agreed. This would include an interpretation panel on the PRow passing along the boundary of Development Parcel B to the north of the Power Station Site and in the visitor centre, so the public may appreciate and better understand the asset within the landscape setting. Archaeological matters are secured by Requirement 16 of the Recommended DCO.
- 5.9.9. The Applicant has acknowledged the impact of the Proposed Development on the visual appearance and composition of the existing Drax Power Station. Paragraph 10.5.69 in ES Chapter 10 [APP-078] states that the Proposed Development would jar within the existing Drax Power Station complex from certain elevations and conflict with its simple symmetry. Paragraph 10.5.70 acknowledges that the Proposed Development and in particular the presence of eight stacks would protrude above the horizontal lines created by the tops of the cooling towers, forming a strong contrast to the existing mass due to their narrow width and form, and visually clutter the top of the towers resulting in a slightly discordant view from certain angles.

### **Examination**

- 5.9.10. Given the design of the Proposed Development and its impact was discussed largely in the context of the historic value on the existing Power Station, the ExA decided early in the Examination to explore design alongside other historic environment related matters.
- 5.9.11. In response to ExA's WQs and in the LIR [REP2-047], SDC and NYCC acknowledge that there was value in the layout, building design and massing of the original 1960's Drax Power Station design. SDC and NYCC

expressed concern that the Proposed Development would conflict with the symmetry of the original design resulting in visual coalescence, visual clutter and discordant views. While SDC and NYCC acknowledge that these constraints and alternative solutions were considered by the Applicant, they believe that inherent design measures such as colour and lighting, and the retention of existing vegetation is not sufficient to offset the likely significant residual visual effects inherent through the design.

- 5.9.12. In response to the LIR [REP3-026] and in response to the ExA's WOs [REP2-035] the Applicant states that the existing Drax Power Station has limited heritage value. It does not appear on the National Heritage List for England, nor on the NYCC Historic Environment Record which would merit it being of regional importance. It is also not recorded as a building of local significance with SDC.
- 5.9.13. The Applicant has also added [REP2-035] that HE does not consider the existing Drax Power Station to be an asset demonstrably of equivalent significance to a designated monument. The signed SoCG with HE [REP1-003] does not discuss this matter, and there are no matters of disagreement, or outstanding matters under discussion. The SoCG with HE [REP1-003] agrees that the effects of the Proposed Development would result in less than substantial harm on designated heritage assets, and suitable locations to provide interpretative panels.
- 5.9.14. The ExA examined the issue further at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013]. The ExA asked SDC and NYCC if local or regional listing of the existing Drax Power Station had been considered given the acknowledgement of the significance of the original design in the LIR [REP2-047]. The response was that it had been considered, but no decision regarding local or regional listing had been taken. The matter was not explored any further and has not been discussed in the SoCG signed between the Applicant and NYCC and SDC [AS-136]. There are no outstanding matters to resolve with regard to the historic environment in the SoCG [AS-136].

### **Conclusion**

- 5.9.15. We are satisfied that there would be no significant negative effects from the construction and operation of the Proposed Development, and the subsequent presence of additional and significant sized infrastructure, on the historic environment. We are satisfied that the Proposed Development would accord with the relevant NPSs. The provision of interpretative panels at suitable locations about the setting of the heritage assets is suitable mitigation. We are satisfied that Requirement 16 (archaeology) would ensure an appropriate way in which to investigate and record archaeological remains should they be discovered during the construction particularly of Work No 7 (gas pipeline) and Work No 6 (AGI). This is secured in the Recommended DCO.
- 5.9.16. The ExA considers that the Applicant, SDC and NYCC could have engaged further to ensure that the design development process, and the proposed layout and composition took greater account of the visual and functional significance of the original Power Station Site. This is because all parties

had acknowledged the value of Drax as one of the last remaining coal fired power stations constructed in the 1970s in England [REP2-035]. However, in circumstances where the original power station has no formal historic built environment designation, the ExA has accorded the existing structure a lower significance than that accorded to a formally designated asset. Accordingly, the ExA is satisfied that design satisfies the technical and operational efficiency of the Proposed Development, and in that regard meets the policy requirement. The effect in the planning balance is neutral.

## **5.10. BIODIVERSITY**

### **Background**

- 5.10.1. Paragraph 5.3.3 of NPS EN-1 states that where the development is subject to EIA, the Applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of Principal Importance for the conservation of biodiversity.
- 5.10.2. Paragraph 5.3.7 of NPS EN-1 states that development should aim to avoid significant harm to biodiversity and geological conservation interests. Paragraph 5.3.8 states that the SoS should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.
- 5.10.3. Paragraph 5.3.4 of NPS EN-1 states that the Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests. Paragraphs 5.3.15 and 5.3.19 state that the SoS should maximise opportunities for building-in beneficial biodiversity or geological features, using requirements or planning obligations where appropriate.
- 5.10.4. ES Chapter 9 [APP-077], supported by Appendices [APP-107] to [APP-116] and [REP1-010], [REP1-011] and [REP2-031], examines the effect of the Proposed Development on biodiversity. It states that the biodiversity assessment has been gathered through a desk-based study and surveys of the Power Station Site and its immediate surroundings. The assessment identified no designated sites for biodiversity within the Site. Ten sites designated as of international importance (European sites) have been identified within 15km of the Proposed Development, eight sites designated as of national importance have been identified within 5km of the Proposed Development and four sites designated as of local importance have been identified within 2km of the Proposed Development.
- 5.10.5. The ES [APP-077] states that the Stage 1 works would result in the permanent and temporary loss of a proportion of the habitats within the site boundary, including a number of habitats of Principal Importance and Local Biodiversity Action Plan (LBAP) habitats, which is identified to be a

significant effect at a local geographical scale prior to mitigation/enhancement. This effect would be mitigated through the production of the LBS, which will detail the areas to be retained and reinstated, along with compensation areas proposed to replace areas permanently lost. Best practice construction measures including noise prevention measures would be implemented through the CEMP to protect commuting bats, water voles, breeding birds and reptiles. A non-native species management strategy would also be devised as part of the LBS and will contain construction measures to prevent accidental spread. The LBS and CEMP are secured by Requirements 8 and 17 of the Recommended DCO.

- 5.10.6. The ES [APP-077] states that Stage 2 works would be similar to those assessed in Stage 1. However, due to Unit Y's more northerly location, certain similar habitats not impacted during the construction of Unit X would be lost or subject to disturbance as a result of the construction of Unit Y. As for Stage 1, this would be mitigated through the LBS and CEMP. Operational emissions with or without abatement technology are not predicted to have significant adverse effects on biodiversity. Stage 3 is predicted to be similar to Stages 1 and 2.
- 5.10.7. In ES Chapter 12 [APP-080] it states that the diversion of the North Perimeter Ditch would likely result in loss of the existing habitat, but that it would be re-established in the diverted channel, which would be secured by Requirement 17 (CEMP) of the Recommended DCO. The ES concludes that this watercourse, which lies within the Drax Power Station complex is unlikely to be used by otters and water voles, and it is unlikely that the ditch provides an appropriate environment for protected species.
- 5.10.8. Decommissioning works would be subject to a DEMP which is secured by Requirement 26 of the Recommended DCO. The LBS is secured by Requirement 8, and the CEMP by Requirement 17 of the Recommended DCO. Accordingly, the ES [APP-077] concludes the Proposed Development would have no significant negative effects on biodiversity and wildlife.
- 5.10.9. The Application was accompanied with a BNG Assessment [APP-116], updated at D2 [REP2-023]; at D6 [REP6-004]; and D9 [REP9-007]. The documents have calculated the BNG for both biodiversity units (BU) and linear units (LU) and have varied throughout. The changes to the BNG figures are attributed by the Applicant [REP9-007] to changes made to the Application including the removal of Stage 0; updated survey work; revision to the Outline LBSs ([APP-135], [REP2-026], [REP6-009], [REP7-007], and [REP9-008]) including revised and additional mitigation.

### **Examination**

- 5.10.10. Both NYCC and SDC [RR-309] [RR-315] and [REP2-047], and YWT [RR-320] and [REP2-046] raised similar concerns in respect to biodiversity matters during the Examination.



- 5.10.11. The LIR [REP2-047] states that NYCC and SDC accept the scope and assessment of ES Chapter 9 [APP-077] and acknowledges the Outline LBS [APP-135] offered mitigation, compensation and enhancement measures for impacts that have been detailed within the ES [APP-047]. However, NYCC and SDC [REP2-047] were concerned as to whether BNG had been adequately demonstrated.
- 5.10.12. YWT in its RR [RR-320] and response to WQs [REP2-046] advanced these concerns. It pointed to the Framework's requirement for the provision of net gains for new development for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. YWT states [RR-320] that in its view, insufficient information had been advanced by the Applicant to fully assess the implications of the proposals and the likely achievable net gain. YWT [RR-320] and [REP2-046] states that best practice would be a target of 20% BNG.
- 5.10.13. Matters raised by NYCC, SDC and YWT in their RRs [RR-309], [RR-315] and [RR-320] were explored in WQs [PD-006]. In response [REP2-035] also included in its D1 response [REP1-013], the Applicant states that the proposed target of 20% BNG is not standard practice. The level of gain delivered is broadly in line with the new Building Research Establishment Environmental Assessment Method (BREEAM) ecological assessment, which recommends delivery of 105% to 110% of biodiversity units, with 110% providing significant net gain. The Applicant also states that by reusing a significant amount of existing infrastructure the Proposed Development has a relatively minor land take of semi-natural habitats.
- 5.10.14. The ExA considered that the issue of BNG warranted further discussion at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013]. The ExA firstly pressed NYCC, SDC and YWT as to the reason why the current achievement of 5% BU net gain and 6% LU net gain, as submitted by the Applicant in its BNG Assessment issued at D2 [REP2-023] was not high enough. NYCC, SDC and YWT responded that the net gain secured of 5% for BU and 6% for LU was the minimum expected and that a recent DEFRA consultation recommended 10%. The Applicant was also challenged by NYCC and SDC to look at improving biodiversity on land it already owned in the vicinity as part its mitigation works.
- 5.10.15. The Applicant responded that it would look at whether the latter point was achievable. However, it stated that the introduction of additional planting on the land of a landowner (the Bingley Land) would result in an improvement. This was reflected in the updated BNG Assessment submitted at D9 [REP9-007] in which the Applicant confirmed that it would commit to a minimum a BU net gain of BU net gain of 7% and an LU net gain of 8%, but that it would look at ways to increase these figures during the development programme.
- 5.10.16. In response to the ExA's FWQ BHR 2.4 [PD-014] in respect to otter and fish mitigation, the Applicant updated the Outline CEMP at D6 [REP6-005] to strengthen the wording to match that used in the Outline LBS

and HRA Report (both of which were also updated at D6) [REP6-009] and [REP6-006]. This was undertaken in order to clarify that the necessary mitigation measures would be carried out under the CEMP and are not optional activities.

- 5.10.17. At the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013], the ExA raised concerns as to whether the Outline CEMP at that time [REP2-025] was sufficiently precise and clear in respect to construction techniques for water crossings. The Applicant offered to strengthen the wording to ensure that any deviation from the measures set out in the CEMP would be shared with NYCC and SDC prior to their commencement. NYCC and SDC [REP6-016] in response to our FWQ BHR 2.2 [PD-014] confirmed that they were content with this wording.
- 5.10.18. The SoCG signed between the Applicant and NYCC and SDC [AS-136], YWT [REP8-009], and NE [REP1-004] confirms that the ES [APP-077] adequately demonstrates there would be an acceptable net gain of area-based and linear habitats. They further state that biodiversity offsetting assessment presented in the revised BNG report and submitted at D6 [REP6-004] is suitable and agreed. No further response was submitted to the BNG Assessment submitted at D9 [REP9-007]. It is also agreed that initial concerns raised on improvements to ecological networks were resolved through the submission of an updated Outline LBS at D2 [REP2-026].
- 5.10.19. The SoCG signed between the Applicant and NE [REP1-004] further agrees all mitigation proposed in the Outline LBS as it was then [APP-135]. NE raised no objections or comments to the subsequent iterations of the Outline LBS [REP2-026], [REP6-009], [REP7-007], and REP9-008]; indeed it confirmed in a response to our FWQ BHR 2.4 [PD-014], albeit that it was referring to the specific subject matter of otter and fish mitigation, that it was content with the Outline LBS.
- 5.10.20. The SoCG signed between the Applicant and YWT [REP8-009] states that YWT welcomes the increase in BNG as shown in the latest BNG Assessment report [REP6-004], but that the Applicant should continue to look for further opportunities to deliver additional net gain through the detailed design process. Both SoCGs between the Applicant and NYCC and SDC [AS-136] and YWT [REP8-009] state that the Applicant has agreed to continue to look for further opportunities within Drax's own land holdings to deliver additional BNG; this would be secured through the submission of an LBS, which is secured by Requirement 8 of the Recommended DCO. It was also agreed that any biodiversity impacts associated with Work No 7 (gas pipeline) are adequately mitigated through CEMP which is secured by Requirement 17 of the Recommended DCO [REP9-004].

## **Conclusion**

- 5.10.21. The ExA is satisfied that following the application of mitigation no significant adverse effects on biodiversity are predicted. We also welcome the agreement that the Applicant will look for further opportunities within

Drax's own land holdings to deliver additional BNG; this would be secured through the submission of an LBS which is secured by Requirement 8 of the Recommended DCO. The ExA concludes that the Proposed Development will accord with all legislation and policy requirements and that such matters are adequately provided for and secured by Requirements 8 and 17 in the Recommended DCO.

- 5.10.22. Because the Proposed Development would result in BNG net gain, the effect in the planning balance is positive.

## **5.11. LANDSCAPE AND VISUAL AMENITY**

### **Background**

- 5.11.1. Paragraph 5.9.5 of NPS EN-1 states that the Applicant must carry out a landscape and visual assessment and report it in the ES, and that it should include reference to any landscape character assessment relevant to the proposed project. The Applicant's assessment should also take into account any relevant policies based on these assessments in local development documents in England. Paragraph 5.9.6 of NPS EN-1 states that the assessment should include effects during the construction of the project and the effects of the completed development and its operation on landscape components and landscape character. Paragraph 5.9.7 states that the assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity, and should include light pollution effects, including on local amenity, and nature conservation.
- 5.11.2. Paragraph 5.9.8 of NPS EN-1 states that virtually all nationally significant energy infrastructure projects will have effects on the landscape, and paragraph 5.9.18 states that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. Paragraph 5.9.15 states that the scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure and the SoS should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project. Paragraph 5.9.22 of NPS EN-1 adds that within a defined site, adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes depending on the size and type of the proposed project. Materials and designs of buildings should always be given careful consideration.
- 5.11.3. Section 5.10 of NPS EN-1 establishes the requirements for identifying and mitigating impacts of energy infrastructure projects on open space, green infrastructure and Green Belt. Paragraph 5.10.1 of NPS EN-1 provides that an energy infrastructure project will have direct effects on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development. Given the likely locations of energy infrastructure projects there may be particular effects on open space including green infrastructure. Paragraph 5.10.21 states that where green infrastructure

is affected, the SoS should consider imposing requirements to ensure the connectivity of the green infrastructure network is maintained in the vicinity of the development and that any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space including appropriate access to new coastal access routes.

- 5.11.4. Paragraph 2.6.5 of NPS EN-2 acknowledges that it is not possible to eliminate the visual impacts associated with a fossil fuel generating station, and mitigation is therefore to reduce the visual intrusion of the buildings in the landscape and minimise impact on visual amenity as far as reasonably practicable. Paragraph 2.6.6 states that Applicants should design fossil fuel generating stations with the aim of providing the best fit with the existing local landscape so as to reduce visual impacts. This may include design of buildings to minimise negative aspects of their appearance through decisions in areas such as size, external finish and colour of the plant as far as compliance with engineering and environmental requirements permit. The precise architectural treatment will need to be site-specific. At paragraph 2.6.7, it states that reduction of visual impacts may often involve enclosing buildings at low level as seen from surrounding external viewpoints. Earth bunds and mounds, tree planting, or both may be used for softening the visual intrusion and may also help to attenuate noise from site activities.
- 5.11.5. ES Chapter 10 [APP-078], supported by Appendices [APP-117] to [APP-123], outlines the landscape and visual assessment and identifies the likely significant effects of the Proposed Development on landscape character and visual receptors. The assessment considers the following categories of people who may experience changes to their views: residents and workers; users of recreational space; and users of footpaths and transport routes and users of educational facilities and places of worship. The assessment gathered information through a desk-based study and surveys of the Site and its immediate surroundings. It considers a study area of 10km radius around the Site. This study area was decided on the basis of a combination of both professional judgment and discussions with the NYCC and SDC.
- 5.11.6. The ES [APP-078] describes the vegetation within the current landscape of the 10km study area as characterised by small blocks of woodland with intermittent hedgerow and hedgerow trees. The topography within the study area is relatively flat, lying between 5m and 15m AOD. Power stations, pylons and wind farms are prominent features in the landscape. The study area includes small to medium sized villages and towns and residential properties and farms. Settlements within 10km the Proposed Scheme include: Drax, Camblesforth; Carlton; Newlands; Rawcliffe; Snaith; West Cowick; East Cowick; Moorends; Barlow; Hemingbrough; Cliffe; Long Drax; Barmby on the Marsh; Asselby and Knedlington; Little Airmyn; Airmyn, and Howden.
- 5.11.7. The ES [APP-078] sets out that the proposed siting and design has been influenced by a number of environmental and technological constraints:

- Locating Units X and Y as close as possible to the existing steam turbines in order to re-use existing infrastructure, maximising efficiency and enable ongoing operations at Drax's coal units;
- technology of Gas Turbine to achieve higher efficiency electricity production and lower emissions of CO<sub>2</sub> per MW;
- stack heights associated with Units X and Y would have a maximum height of 120 m (126 m AOD) At D3 the Applicant submitted an Assessment of Non Material Amendments to the Proposed Development (Revision 1) [REP3-022] detailing changes to the design including change of the proposed heights of the stacks to between a minimum of 122.5 m (128.5 m AOD) and a maximum height of 123 m (129 m AOD), in response to air quality impacts and associated stack height sensitivity modelling;
- suitable materials would be used, where possible to reduce reflection and glare, and to assist with breaking up the mass of the buildings and structures. Requirement 7 of the Recommended DCO [REP9-004] requires the approval by the relevant LPA of the details of the external appearance; and
- extent of Applicant's land holdings has meant that the Proposed Development is concentrated within the Existing Drax Power Station Complex (Section 10.6.9 of the ES [APP-078]). In further discussions during the Examination (Written Summary of Drax Power Limited's ("the Applicant") Oral Case put at the Environmental Matters Issue Specific Hearing – 5 December 2018 (Submitted for Deadline 4) [REP4-012], the Applicant states that extensive off-site mitigation was deemed unfeasible since it would result in the loss of Best and Most Versatile (BMV) agricultural land (Grade 1 and 2).

5.11.8. The Landscape Visual Impact Assessment (LVIA) in the ES [APP-078] sets out that the likely principal construction impacts on the landscape resource, visual receptors and biodiversity associated with the Proposed Development include:

- Erection of tree protection measures prior to commencement of ground works;
- site clearance, removal of vegetation and topsoil stripping and temporary stockpiling of turf, earth and storage of materials
- movement of construction related traffic;
- general construction activities including the movement of large-scale construction equipment, creation of site compounds, and the presence of temporary hoardings and signage;
- erection of a temporary pedestrian bridge across New Road and between Development Parcels A and B;
- presence of four cranes; construction site lighting; and
- construction of the Proposed Development including Units X and Y, battery storage facility, NGRF, laying of the pipeline and two AGIs, other smaller structures and associated infrastructure (including site hoarding) and construction laydown areas.

5.11.9. The likely principal operational or permanent impacts on the landscape resource, visual receptors and biodiversity associated with the Proposed Development would include:

- Introduction of permanent large-scale structures including up to four gas turbines and up to four heat recovery steam generators;
- construction of a battery storage facility for each of Unit X and Unit Y;
- NGRF/ gas compressor building with associated stacks – up to four stacks in two pairs;
- introduction of a permanent compound and car parking areas;
- gas pipeline and two AGIs;
- creation of new and soft landscaping elements, increased vegetation cover; and
- operational traffic and lighting.

5.11.10. The LVIA in the ES [APP-078] concludes that there would be significant effects on specific landscape character types and areas, on the Lower Derwent Important Landscape Area and on local landscape features. Equally, adverse effects would also be experienced by a variety of local visual receptors within 3km of the Proposed Development subject to their proximity, orientation and the presence or absence of intervening vegetation and built form.

5.11.11. The Applicant proposes that the Outline LBS [APP-135] (final Outline LBS submitted at D9 [REP9-008]) would mitigate the loss of habitat during Stages 1 and 2. Subsequently, the mitigation during Stage 3 would involve the ongoing management and maintenance of the planting undertaken during earlier stages as part of the LBS.

5.11.12. The Outline LBS [REP9-008] seeks to address some of the significant effects identified in the LVIA with initial proposals for compensation areas. The Outline LBS has considered the opportunities to improve connectivity to the green infrastructure network linking with adjacent landscape features. Opportunities to meet the objectives defined in the Leeds City Green Infrastructure Strategy and the Ouse Catchment Management Plan have also been reviewed. The Applicant has acknowledged that the Proposed Development is constrained by a number of technological and environmental requirements, and as such significant landscape and visual effects would inevitably remain despite the measures proposed. The Applicant considers that, given the constraints outlined, the Outline LBS addresses the key landscape and visual amenity effects as far as reasonably practicable.

### **Examination**

5.11.13. The effects on landscape character and visual impact was a principal issue in the Examination and identified from the outset by NYCC and SDC in their joint LIR [REP2-047]. NYCC and SDC gave joint responses on this matter throughout the Examination, but by the close of the Examination, NYCC and SDC had adopted different positions on the proposed mitigation; with NYCC retaining an objection.

5.11.14. The LIR [REP2-047] agrees that the environmental and technological constraints that have influenced the siting and design exist, and that the proposed design outcome is a product of those constraints. Quoting from the NPS EN-1, NYCC and SDC say [REP2-047] that paragraph 5.9.23

states that depending on the topography of the surrounding terrain and areas of population it may be appropriate to undertake landscaping off site. The LIR [REP2-047] states that the Applicant has not sufficiently demonstrated that the spirit of these policies has been taken into account, by mitigating offsetting or minimising significant adverse landscape and visual effects identified in the LVIA in the ES [APP-078].

- 5.11.15. NYCC and SDC response [REP2-047] to the D2 submission of the LBS [REP2-026] was that the Outline LBS was too heavily focussed on optioneering a select number of sites, rather than on need and how it can be achieved, or a review of the wider options to compensate by improving green infrastructure. The LIR [REP2-047] identifies the Locally Important Landscape Areas (LILAs) located to the north-west of the proposed scheme at Brayton Barff and Hambleton Hough situated within the wider 10km study area and the Lower Derwent LILA. The LIR considers that the impact on the Lower Derwent LILA should be addressed within the Applicant's mitigation strategy and the LBS (referred to in the ES [APP-078] as Lower Derwent Important Landscape Area).
- 5.11.16. NYCC and SDC state [REP2-047] that Drax Power Station falls within the Leeds City Region Green Infrastructure Strategy Area and the River Ouse catchment area. SDC's green infrastructure policies aim to contribute to the development of the Leeds City Region Green Infrastructure Strategy, and to take account of its emerging priorities. The LIR [REP2-047] says that while the LVIA has identified that there would be significant adverse landscape and visual effects, the applicant has not sufficiently demonstrated that the spirit of local green infrastructure policy has been taken into account, by enhancing existing green infrastructure or providing new green infrastructure in order to mitigate, offset or minimise significant adverse landscape and visual effects.
- 5.11.17. YWT raised similar concerns in its RR [RR-320] and WR [REP2-046]. YWT states that the LVIA in the ES [APP-078] lists over 50 moderate or major landscape impacts during construction and operation, but with little mitigation being suggested. YWT [RR-320] suggest discussions with other partners on possible landscape mitigation in areas such as Barlow Common Nature Reserve and the River Ouse and River Derwent floodplains, which could have value for landscape, flood reduction, biodiversity and green infrastructure. The ExA requested further explanation in our WQ LV 1.3 [PD-006], and YWT responded [REP2-046] stating that projects close to Drax could go some way towards compensating for landscape impacts and biodiversity loss and have potential for BNG.
- 5.11.18. In the SoCG [REP8-009] signed between the Applicant and the YWT there are no outstanding matters relating to Landscape. The SoCG does state however, that YWT is of the opinion that further mitigation is required probably outside the application boundary. The SoCG [REP8-009] also said that YWT has worked with NYCC to provide potential projects which would provide landscape mitigation, and also green infrastructure, biodiversity and flood reduction benefits.

- 5.11.19. The Applicant's position statement on Landscape and Visual Amenity Effects submitted for D2 [REP2-033] concludes that the benefits of providing further mitigation would be disproportionately low. The Applicant adds that the significance of effect would not change compared to the disbenefits which is primarily land take of BMV agricultural land associated with further mitigation. Accordingly, the Applicant considers that it has taken the necessary measures to minimise the effects of the Proposed Development on landscape and visual amenity as far as reasonably practicable as required by paragraphs 2.6.5 and 2.6.8 of NPS EN-2.
- 5.11.20. In response to the LIR [REP2-047], the Applicant [REP3-026] reiterates that no further on or off-site planting would be reasonable or beneficial. However, the Applicant added that it is open to agreeing with the NYCC and SDC a partnering arrangement to carry out necessary landscape improvements. While this would not directly mitigate the Proposed Development, the Applicant recognises the benefits this would create. The Applicant added that the Outline LBS [REP2-026] has considered the objectives defined in the Leeds City Green Infrastructure Strategy and the Ouse Catchment Management Plan, but opportunities are limited by a number of siting, operational and other limitations.
- 5.11.21. Having reviewed the LIR and WR of NYCC and SDC [REP2-047], the ExA tabled landscape and visual issues as a matter for discussion at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV010] to [EV-013]. Under questioning from the ExA, NYCC and SDC reiterated their concerns that the Outline LBS was insufficient to adequately mitigate the identified harm as set out in the ES [APP-078]. The ExA requested NYCC and SDC to state what it considered was necessary in order to, in their view, successfully mitigate the scheme.
- 5.11.22. An off-site mitigation strategy (OSMS) was tabled following the ISH1 by NYCC and SDC's appointed consultant Martin Woolley at D4 [REP4-016]. This document was to be treated as the NYCC and SDC's evidence of what they considered was required to adequately mitigate the effects of the Proposed Development as set out in the ES [APP-078].
- 5.11.23. The OSMS [REP4-016] made a number of observations and set out various landscape and biodiversity projects in the 10km radius of Drax Power Station with ongoing and planned projects. The OSMS [REP4-016] states that it is reasonable and appropriate that significant adverse effects on existing landscape character areas should be compensated for in the form of landscape enhancement measures. The OSMS put forward five different options to offset or compensate for the significant adverse landscape and visual effects predicted by the Applicant's LVIA in the ES [APP-078], with an average fund value of the five options at £10.6m. The OSMS goes on to recommend establishing a Community Trust delivered by a partnership of local organisation over a 25-year period.
- 5.11.24. The Applicant stated at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013] and confirmed in its written submission at D4 [REP4-012], that it had already seen an



advanced copy of NYCC and SDC's OSMS [REP4-016]. The Applicant stated that it did not agree with the contents but was in continued dialogue with NYCC and SDC.

- 5.11.25. The ExA considered that NYCC and SDC's OSMS [REP4-016] lacked justification, and we sought further explanation in FWQ LV 2.2 [PD-014] particularly as to how the mitigation was derived at and whether it met the tests of paragraph 56 of the NPPF. We also asked the Applicant to set out its main concerns with it in FWQ LV 2.3 [PD-014]. NYCC and SDC in its response to this question [REP6-019] indicated a response would follow, which unfortunately was not forthcoming prior to the ISH3 on Environmental Matters on Tuesday 12 February 2019 [EV-020] and [EV-021].
- 5.11.26. The Applicant's D6 response [REP6-012] states that the mitigation requested in the OSMS [REP4-016] was excessive and disproportionate to the landscape and visual impacts associated with the Proposed Development. The Applicant proposed to only support the mitigation and enhancement measures in two areas. The first area of mitigation would be Bingley Land which seeks to introduce through a land agreement outside of the Order Limits further planting resulting in a reduction in localised visual effects. The second area of mitigation /enhancement relates to the Trans Pennine Trail and the resurfacing of the trail within 3km of the Proposed Scheme for a cost of approximately £50,000. While the proposals would not reduce landscape and visual effects, the proposals would, in the Applicant's view, meet some of the green infrastructure objectives referred to in Paragraph 7.6.6 in the OSMS [REP6-012]. The Applicant reiterated this in its responses to ExA's FWQs [REP6-013].
- 5.11.27. At the ISH3 on Environmental Matters held on Tuesday 12 February 2019 [EV-020] and [EV-021], the ExA sought to focus on the projects identified in its OSMS [REP4-016] that NYCC and SDC felt were a priority. The ExA led a lengthy discussion to determine where specifically NYCC and SDC felt the harm lay and sought further justification of how the five options in the OSMS [REP4-016] met the tests in paragraph 56 of the NPPF. After some debate, NYCC and SDC confirmed that its primary concern was the area within 3km of the Power Station Site. The ExA asked NYCC and SDC to identify specific sites that required mitigation. The ExA felt that NYCC and SDC were not willing to identify specific sites, but they did elaborate further on the OSMS [REP4-016], stating that aside from the Outline LBS [REP2-026], a community fund was required to support landscape enhancement projects as they emerge over a longer period of 25 years.
- 5.11.28. NYCC and SDC agreed to review the OSMS [REP4-016] and provide further justification for off-site mitigation to include a specific site or sites on a more focused basis, or project or projects, the financial contribution sought.
- 5.11.29. The Applicant [EV-020] and [EV-021] presented their two additional areas of additional mitigation in respect to the Bingley Land and the

Trans-Pennine Trail. Regarding the proposal of a community fund, the Applicant said they would reserve comments, but would respond to any proposal from NYCC and SDC.

- 5.11.30. In its D7 response, NYCC [REP7-017] states that while these proposals are welcome, they were clearly not enough or proportionate to the scale of the development and its impact. They also stood by the mitigation proposal set out in their OSMS [REP4-016].
- 5.11.31. An SDC-only D8 submission [REP8-016] states that there was a possibility, without prejudice, that SDC might be able to propose a solution with the Applicant by way of a proposed two-way obligation. The Applicant's response at D9 [REP9-012] clarifies that SDC and the Applicant have reached agreement on an appropriate package of offsetting projects, which will be secured by way of a signed planning obligation which was submitted by the Applicant on the final day of the Examination [AS-140].
- 5.11.32. An NYCC-only revised OSMS was submitted at D8 [REP8-015]. The revised OSMS [REP8-015] prioritised eight existing landscape projects within a 3km radius of Drax Power Station that it says are deliverable within five years, with a project cost, including a 25-year maintenance, of £3.1 million. By way of justification, NYCC states [REP8-015] that the Landscape Character Areas affected by the Proposed Development are already assessed in the North Yorkshire and York Landscape Characterisation Project (May 2011). This provides a framework for developers and environmental partnerships to effectively mitigate and compensate for development, and to manage and maintain the landscape and its character. NYCC also states that the mitigation amount sought represents 0.5% of the published project cost of £600 million for the Proposed Development, which it felt was proportionate.
- 5.11.33. The Applicant states in its D9 submission [REP9-012] that it disagrees with the revised OSMS [REP8-015] and feels that the offsetting measures proposed by the revised OSMS [REP8-015] are still not justified. This is an outstanding matter of disagreement at the close of the Examination.
- 5.11.34. The SoCG signed between the Applicant and NYCC and SDC which was submitted on the final day of the Examination [AS-136] reflects the position of the three parties, where all matters are agreed between the Applicant and SDC, with one matter on landscape mitigation remains outstanding between the Applicant and NYCC. This is also the same in the planning obligation [AS-140] which was signed between all the three parties, Applicant, SDC and NYCC; however, schedule 5 on landscape mitigation is agreed only between SDC and the Applicant.

## **Conclusion**

- 5.11.35. The ExA agrees with the LVIA in the ES [APP-078] that significant effects are predicted on landscape character, local landscape designations and visual amenity as a result of the Proposed Development. While the Outline LBS [REP9-008] sets out mitigation for some landscape effects, inevitably many of the significant adverse effects of the Proposed

Development on the surrounding landscape would remain. Requirement 8 (LBS) would ensure mitigation identified in the ES [APP-078] is adequately carried out, and this is secured in the Recommended DCO. The ExA accepts that the adverse landscape and visual effects of the Proposed Development cannot be avoided entirely, and as such the Outline LBS mitigates the landscape and visual effects of the scheme as far as reasonably practicable. In that regard the ExA concludes that the Proposed Development will comply with the policies in NPS EN-1 and EN-2.

- 5.11.36. The ExA is not convinced that the partnership proposal and mitigation strategy in the revised OSMS [REP8-015] had been adequately justified on grounds of the NPSs or Paragraph 56 of the NPPF. NYCC is seeking a community fund in order to undertake long-term landscape mitigation. This is consistent with its policies, and indeed no IPs raised any concern with this approach in principle. However, the ExA does not consider that sufficient evidence has been advanced to justify that the contributions sought for the final eight mitigation projects were specific to the Proposed Development. Nor did the ExA see sufficient evidence that the Proposed Development is proven to be the direct cause of the deterioration of the landscape character in general which the OSMS seeks to repair. Ultimately, NYCC were unable to demonstrate to the ExA on the several opportunities put to them, that their approach fundamentally met the tests in Paragraph 56 of the Framework.
- 5.11.37. The ExA understands the position set out by NYCC supported by SDC and YWT and feels that the Applicant could have adopted a more significant stewardship role given the visual, functional, and indeed historical prominence of the existing power station and the Proposed Development in the local and regional area. The ExA concludes that while the Applicant's LBS [REP9-008] sets out only the minimum required mitigation and enhancement for a development of the given scale and significance, it does in fact satisfy all policy requirements. Overall, we consider this to be a net negative assessment, but it carries only minimal weight in the planning balance because of the statements contained within the NPSs.

## **5.12. FLOODING AND WATER**

### **Background**

- 5.12.1. Paragraph 5.7.3 of NPS EN-1 states that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk. Where new energy infrastructure is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall.
- 5.12.2. Paragraph 5.7.4 of NPS EN-1 states that all proposals for energy projects located in Flood Zones 2 and 3 in England should be accompanied by a Flood Risk Assessment (FRA), which should identify and assess the risks of all forms of flooding to and from the project and demonstrate how

these flood risks would be managed, taking climate change into account. Paragraph 5.7.10 states that for construction work which has drainage implications, the SoS will expect the drainage system to comply with any National Standards published under the Flood and Water Management Act 2010.

- 5.12.3. Paragraph 5.7.13, 5.7.14, 5.7.15 and 5.7.16 of NPS EN-1 set out the need for development to pass a Sequential Test, then an Exception Test if development is to be considered permissible in a high-risk Flood Zone area. Paragraph 5.7.12 of NPS EN-1 states that the SoS should not consent development in Flood Zone 3 unless they are satisfied that the Sequential and Exception Test requirements have been met.
- 5.12.4. ES Chapter 12 [APP-080], supported by the FRA [APP-136], examines the effect of the Proposed Development on flooding and water matters. It identifies 19 surface water features that could potentially be affected by the Proposed Development. The Carr Dyke is a culverted watercourse which deviates within the Power Station Site; and the Willow Road Drain and Dickon Field Drain would be crossed by Work No 7 (gas pipeline). The ES [APP-080] identifies the bedrock as a Principal Aquifer; known to provide a high-level water storage and a supporter of water and/or river base flow on a strategic scale. The ES [APP-080] further identifies the site for the Proposed Development as being within a groundwater protection zone and is within both Flood Zone 2 and 3.
- 5.12.5. The ES [APP-080] states that there is a risk of pollution to surface and groundwater caused by increased sediment load from Stages 1 and 2 works, caused by activities such as the construction of culverts; land clearance; excavation of land and dewatering. There would also be a risk from accidental spillages of oil, hydrocarbons and hazardous substances, principally caused from vehicles. These would be controlled through the CEMP which is secured by Requirement 17 of the Recommended DCO. Trenchless crossing techniques for the watercourses would be determined through the detailed construction stage, which are also included within the CEMP.
- 5.12.6. The ES [APP-080] states that the Proposed Development would result in an increased amount of impermeable areas and thus increase the rate and volume of surface water runoff generated within the Power Station Site from Stage 3 works. However, discharge would be to existing drainage systems and would accord with the Surface Water Drainage Strategy which is secured by Requirement 13 of the Recommended DCO.
- 5.12.7. The ES [APP-080] is accompanied by an FRA [APP-136], which was updated following the acceptance of the Application [AS-014] and at D2 [REP2-027]. The FRA undertakes a hydraulic modelling exercise to determine the effects of the Proposed Development on flooding. It concludes that the Proposed Development would result in localised minor increases in flood depths of less than 10mm in Drax village, which is not considered to be significant. Decommissioning works would be similar to Stages 1 and 2 and would be subject to the DEMP which is secured by Requirement 26 of the Recommended DCO.

- 5.12.8. Accordingly, the ES [APP-080] concludes that the Proposed Development would not have any significant negative effects on flooding and water quality.

### **Examination**

- 5.12.9. In its RR [RR-292] and WR [REP2-041], the EA state that matters concerning flood risk activities and discharges to surface and groundwater are matters covered by the EP Regime. Accordingly, the EA will need to be adequately satisfied that these matters are sufficiently robust before a permit is issued.
- 5.12.10. The EA [RR-292] and [REP2-041] states the Other Consents and Licences document [APP-068] did not acknowledge the need to obtain an EP in the event works were to take place within 8m of a main river; 16m for tidal main rivers. The Applicant updated the document both at D2 [REP2-020] and at D3 [REP3-016] to address the EA's comments.
- 5.12.11. While the EA [RR-292] and [REP2-041] reported no concerns with the scope and assessment within the then up-to-date version of the FRA [AS-014], it was concerned that no such requirement was present in the draft DCO [AS-012]. This was subsequently inserted by the Applicant at D2 [REP2-014] as Requirement 14. The EA [REP2-041] also raised concerns with the content of the Outline CEMP [APP-133] in respect to construction practices and drainage matters; and this was updated also at D2 [REP2-025].
- 5.12.12. NYCC and SDC state in their WR submitted at D2 [REP2-047] that while NYCC was the lead local flood authority for the area, the Proposed Development falls within the administrative boundary of the Selby Area IDB, and whose opinion it would defer. The Selby Area IDB did not directly participate in the Examination. In our Rule 6 letter issued on 6 September 2019 [PD-004], the ExA states that it expected a SoCG to be signed with the Selby Area IDB and the Applicant responded at the PM [EV-002] and [EV-003] that one would be provided and that there were no matters of disagreement. This was duly confirmed by the submission of the signed SoCG which was submitted into the Examination at D3 [REP3-018].
- 5.12.13. The ExA's main concern with these matters concerned the crossing techniques to be deployed for watercourses in connection with Work No 7 (gas pipeline); specifically, WQs FW 1.1 and FW 1.2 where we sought further information and assurances of its use, and whether the ES [APP-080] conclusion of no likely significant effects was based on trenchless, or open cut techniques. The Applicant sought to provide that clarity and assurance in its response to D2 [REP2-035] by drawing together elements from various paragraphs from its submissions, and it confirmed that the Outline CEMP [APP-133] updated at D2 [REP2-025], at D4 [REP4-005], at D6 [REP6-005] and D8 [REP8-006] would secure approval of the construction method to be deployed. The CEMP is secured by Requirement 17 of the Recommended DCO.

- 5.12.14. The ExA was not persuaded by the response given by the Applicant and discussed the matter at the ISH1 on Environmental Matters held on Wednesday 5 December 2018 [EV-010] to [EV-013]. Following a discussion on the matter, the Applicant stated that while it couldn't commit to a specific construction method type for a particular crossing at this stage, it could strengthen the CEMP [REP2-025] so that before any techniques are carried out there would be the assessment of the whole pipeline route and then a final decision would be made as to the techniques, and that information would be provided to the relevant planning authority. This, the Applicant states, would assist them with their monitoring and enforcement of the CEMP.
- 5.12.15. An updated Outline CEMP was submitted at D4 [REP4-005] to reflect this additional information. NYCC and SDC confirmed [REP6-016] in its D6 response to our FWQ BHR 2.2 [PD-014] that it was content with the Outline CEMP [REP4-005] on this matter. The ExA was satisfied with the answers to our other WQs [PD-006] in respect to flooding matters and raised no further questions during the Examination.
- 5.12.16. The ES [APP-080] confirms that a WFD Screening was submitted to the EA during the pre-application period. The EA confirms in its response [REP2-042] to WQ FW 1.6 [PD-006] that it agreed with the findings of the WFD Screening, and that a full WFD assessment was not required in relation to hydromorphology or groundwater. We requested that the Applicant submit the WFD Screening into the Examination; this was duly done at D2 [REP2-035].
- 5.12.17. The SoCG signed between the Applicant and the EA [REP9-009] and between the Applicant and NYCC and SDC [AS-136] agrees with the scope and assessment undertaken within the ES [APP-080] and the FRA [APP-136]. It also agrees that the Proposed Development would not have any significant negative effect on flooding, hydromorphology or groundwater. The Parties are also agreed that Requirements 14 and 17 of the Recommended DCO adequately secures flooding and groundwater protection, and that Requirement 7 of the Recommended DCO secures the detailed design of the flood mitigation channel is submitted to and approved by the relevant planning authority. There are no outstanding matters to be resolved with regard to water resource, quality and hydrology.

### **Conclusion**

- 5.12.18. We concur with the EA that the Proposed Development would amount to essential infrastructure, and as such satisfies the Sequential and Exemption Tests required by NPS EN-1. We are also satisfied that the Proposed Development would have no significant effects in respect to flooding, flood defences and pollution of ground and surface water, that it would accord with the WFD, legislation and policy requirements and that adequate measures are secured by Requirements 7, 13, 14, 17 and 26 of the Recommended DCO. The effect in the planning balance is neutral.

## **5.13. WASTE MANAGEMENT**

### **Background**

- 5.13.1. Paragraph 5.14.2 of NPS EN-1 sets a waste hierarchy approach to manage waste which is: prevention; preparation for reuse; recycle; other recovery; disposal. Paragraph 5.14.4 states that all large infrastructure projects are likely to generate hazardous and non-hazardous waste, and that it falls under the EP regime. Paragraph 5.14.6 states that the Applicant should set out the arrangements that are proposed for managing any waste produced and prepare a Site Waste Management Plan (SWMP). The arrangements described should include information on the proposed waste recovery and disposal system for all waste generated by the development, and an assessment of the impact of the waste arising from development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation.
- 5.13.2. ES Chapter 13 [APP-081] examines the effect of the Proposed Development on waste management. It states that during Stage 1, approximately 4,078 tonnes of construction waste would be generated from Unit X and the battery storage area, equating to 1,439 tonnes of waste per year. During Stage 2, the ES [APP-081] states that approximately 3,293 tonnes of construction waste would be generated from the construction of Unit Y, equating to 1,162 tonnes per year, with very little of this generated from the operation of Unit X. Decommissioning waste has not been assessed but would be subject to the DEMP which is secured by Requirement 26 of the Recommended DCO.
- 5.13.3. The ES [APP-081] concludes that there would be no significant negative effects from Stages 1 and 2 because the site waste would contain no or negligible traces of hazardous waste, or minor volumes of non-hazardous or inert waste would be generated and where local waste facilities are unrestricted (i.e. there are more than 20 facilities in the Applicant's study area).

### **Examination**

- 5.13.4. The LIR [REP2-047] accepts the scope and assessment in the ES [APP-081] and that the inclusion of a SWMP within Requirement 17 of the Recommended DCO would accord with the principles of the North Yorkshire Waste Local Plan and via Policy D11 of the emerging Joint Plan.
- 5.13.5. No IPs raised any specific concerns in respect to site waste matters. The EA states both in its RR [RR-292] and WR [REP2-041] that waste that would need any form of treatment before disposal is an EP matter and would be licenced separately from this Order. The EA [RR-292] initially stated that in its view, a SWMP should form a separate Requirement in the draft DCO [AS-012]. The ExA posed this in our WQ DCO 1.19 [PD-006], and the Applicant responded [REP2-035] that the SWMP will be secured as part of the CEMP. The EA's response to the ExA's WQs [REP2-

042] confirms they were content with this. No matters on this issue were discussed at the ISHs on Environmental Matters.

- 5.13.6. NYCC and SDC in their D2 response [REP2-047] state that the Proposed Development, subject to the SWMP forming part of the CEMP, would accord with the principles being sought through the Waste Plan and via policy D11 of the emerging Joint Plan.
- 5.13.7. The SoCG signed between the Applicant and the EA [REP9-009] and NYCC and SDC [AS-136] states that parties are in agreement with the scope and assessment undertaken in the ES [APP-081], and that the Proposed Development would not have any significant negative effect on waste matters, and that a SWMP is adequately secured by Requirement 17 of the Recommended DCO.

### **Conclusion**

- 5.13.8. We are satisfied that the Proposed Development would have no significant effects on waste from construction, operation and decommissioning activities. The Proposed Development would accord with all legislation and policy requirements and waste management matters are adequately provided for and secured by Requirement 17 of the Recommended DCO. The effect in the planning balance is neutral.

## **5.14. GROUND CONDITIONS AND CONTAMINATION**

### **Background**

- 5.14.1. ES Chapter 11 [APP-079] examines the effect of the Proposed Development on ground conditions. It identifies that the site boundary and surroundings are underlain with clay, fluvial and wind-deposit sands; and the areas north of the power station are underlain with clay, silt, sand and gravel. The presence of man-made ground is considered to be highly likely within the Site and surroundings.
- 5.14.2. The ES [APP-079] identifies that the only effects from Stages 1 and 2 is the potential for contaminant release into the existing environment including soil, surface water and groundwater. However, the CEMP, which is secured by Requirement 17 of the Recommended DCO, would ensure procedures for the identification and mitigation of a contaminated risk, and within the CEMP would be a SWMP to ensure that the soil quality will be maintained or restored to pre-development conditions once the construction works are completed. Requirement 15 of the Recommended DCO also ensures a survey of the ground conditions is undertaken for each stage prior to commencement.
- 5.14.3. During operational Stages 2 and 3, the ES [APP-079] states that there is potential for contaminated surface water and groundwater to persist after construction, which could affect human health. However, these are not considered to be significant and would be avoided or minimised through the CEMP. Decommissioning would be undertaken in accordance with a DEMP secured by Requirement 26 of the Recommended DCO. Accordingly, no likely significant effects are identified through the



construction, operation and decommissioning of the Proposed Development on ground conditions.

### **Examination**

- 5.14.4. No IPs raised any concerns in respect to ground conditions and contamination during the Examination. The EA in its RR [RR-292] and in its WR [REP2-041] states that Requirement 14 in the draft DCO [AS-012] was insufficient to protect controlled waters. The ExA raised this in WQ DCO 1.16 [PD-006] and revised wording on the Requirement was submitted by the Applicant at D2 [REP2-014]. The EA confirmed in its response to FWQ DCO 2.6 [PD-014] that it was content with the revised wording [REP6-018].
- 5.14.5. The SoCG signed between the Applicant and the ES [REP9-009] and with NYCC and SDC [AS-136] agrees the scope and assessment of the ES [APP-079] and that the wording of Requirement 15 of the Recommended DCO adequately secures the Proposed Development would not have any significant negative effects on contamination matters.

### **Conclusion**

- 5.14.6. The ExA is satisfied that the Proposed Development accords with all legislation and policy requirements and that land contamination and ground condition matters are adequately provided for and secured by Requirements 15, 17 and 26 of the Recommended DCO. The effect in the planning balance is neutral.

## **5.15. SOCIO-ECONOMICS**

### **Background**

- 5.15.1. Paragraph 5.12 of NPS EN-1 states that where the project is likely to have socio-economic impacts at local or regional levels, the Applicant should undertake and include in their application an assessment of these impacts as part of the ES.
- 5.15.2. ES Chapter 14 [APP-082] examines the effect of the Proposed Development on socio-economics. The ES [APP-082] states that during the construction Stages 1 and 2, the Proposed Development would create an average of 1200 direct, and around 600 indirect jobs per annum. While specialist persons will be required, the ES [APP-082] states that the majority of the persons sought would come from the local area. The ES [APP-082] identifies some reduction in staffing at the existing Drax Power Station but that the Applicant would seek to minimise this through natural processes such as not recruiting following retirement of persons leaving. Accordingly, the ES [APP-082] identified no significant negative effects from the construction, operation and decommissioning phases of the Proposed Development on socio-economic matters.
- 5.15.3. The ES [APP-082] identifies a number of PRowS which would be temporarily and permanently closed during Stages 1 and 2 of the Proposed Development. The ES [APP-082] states that for Stages 1 and 2, the identified PRowS would be fully restored or realigned in

accordance with the PRow Management Plan; this being secured by Requirement 9 of the Recommended DCO.

- 5.15.4. The Framework promotes safeguarding of the long-term potential of BMV agricultural land. The ES [APP-082] states that the land within and surrounding the Power Station Site and the gas pipeline area is classified as BMV agricultural land (defined as Grade 1, 2 and 3a). It identifies 6.03 ha of land that would be subject to permanent loss associated with the Work No 5 (NGRF) and Work No 6 (AGI). However, the ES [APP-082] concludes that these areas are necessary to facilitate the Proposed Development; and are in any event relatively small areas of loss that would not have a significantly negative effect on agriculture production.
- 5.15.5. The ES [APP-082] states that the area of temporary disturbance equates to approximately 26.57 ha associated with Work No. 7 (gas pipeline) and Work No. 14 (passing spaces at the Rusholme Lane). However, both would be constructed over a relatively limited time frame of four months, and all land would be restored; this secured by Requirement 17 of the Recommended DCO. As such, the ES concludes that there would not be a significant effect on BMV agricultural land associated with the Proposed Development.

#### **Examination**

- 5.15.6. No IPs raised any matters of concerns in respect to employment. The ExA noted that employment matters are to be secured by way of a Legal Agreement; Heads of Terms of which were submitted at the outset of the Application [APP-138]. In our WQ DCO 1.23 [PD-006], the ExA asked why the security of local employment and skills was not instead secured by a requirement in the draft DCO [AS-012]. The Applicant states in its response [REP2-035] that a legal agreement is a more flexible way of dealing with such matters, and that it was the preferred way following discussions between themselves and NYCC and SDC. A signed copy of the legal agreement was submitted by the Applicant on the final day of the Examination which secured an employment and training programme [AS-140].
- 5.15.7. The LIR [REP2-047] states that the creation of new construction jobs would have a meaningful impact on the local economy. Securing a local employment scheme by means of a Planning Obligation is the most appropriate means. The SoCG signed between the Applicant and NYCC and SDC [AS-136] confirms this position and that there are no outstanding matters to be resolved with regards to socio-economics.
- 5.15.8. The LIR [REP2-047] reported that NYCC and SDC had not seen an Outline PRow Management Plan but that they were satisfied that Requirement 9 of the draft DCO [AS-012] would adequately secure their provision. Nevertheless, the ExA questioned the Applicant in WQ TT 1.7 [PD-006] why it had not put forward an Outline PRow Management Plan for examination, given that the Proposed Development affected a large number of PRowS. The Applicant responded [REP2-035] stating that while it was not compelled to do so, it nonetheless submitted an Outline PRow [REP2-032]. Requirement 9 of the Recommended DCO secures the

approval of the PRow Management Plan. No further questions were asked by the ExA on this matter.

- 5.15.9. An updated Outline PRow Management Plan was submitted at D7 [REP7-013] following private discussions between the Applicant and NYCC and SDC. The SoCG signed between the Applicant and NYCC and SDC [AS-136] confirms that the Outline PRow Management Plan [REP7-013] is acceptable and that it is adequately secured by Requirement 9 of the Recommended DCO.
- 5.15.10. No IPs raised any concerns in respect to agriculture practices. The ExA sought a further explanation from the Applicant as to the loss of BMV land in our WQ CO 1.7 [PD-006]. The Applicant responded [REP2-035] stating that it was an agreed position as set out in the SoCG signed between the Applicant and NE [REP1-004] that the permanent loss of 6.03 ha would be insignificant. NYCC and SDC state in its D2 response [REP2-047] that it accepted NE's comments on the matter and that the proposed laydown area would be reinstated in accordance with the SWMP which forms part of the CEMP secured by Requirement 17 of the Recommended DCO. No further questions were raised by the ExA on this matter.
- 5.15.11. The SoCG signed between the Applicant and NE [REP1-004] agrees with the scope and assessment in the ES [APP-082] in respect to agricultural and soil management matters and that mitigation is adequately secured by Requirements 15 (ground conditions) and 17 (CEMP) in the Recommended DCO.

### **Conclusion**

- 5.15.12. The ExA is content to recommend that the Proposed Development would not have any significant effects on socio-economic matters or on PRowS, and that adequate mitigation is secured by Requirement 9 of the Recommended DCO and the submitted Planning Obligation.
- 5.15.13. It is entirely reasonable for there to be a mechanism to ensure employment opportunities are sourced from the local market; and securing this by way of a legal agreement is an acceptable way of achieving this. The requirements of the Planning Obligation are, in our minds, not onerous or disproportionate to the Proposed Development. Accordingly, the ExA agrees with the Applicant's D9 submission [REP9-013] that the Proposed Development meets the tests of the paragraph 56 of the Framework in this regard.
- 5.15.14. While undoubtedly there will be disruption to agricultural practices during the construction phase, and some agricultural land would be lost, we are satisfied that they would not be damaging, and that mitigation is adequately secured by Requirements 15 and 17 of the Recommended DCO.
- 5.15.15. Because the Proposed Development would result in employment generation, the ExA considers that the effect in the planning balance is positive.

## **5.16. MAJOR ACCIDENTS AND DISASTER PREVENTION**

### **Background**

- 5.16.1. ES Chapter 16 [APP-084] examines the risk of the Proposed Development on major accidents and disasters. It examines the potential for major accidents and/or disasters to impact human health or the environment either during construction or operation on matters such as oil, gas and electricity transmission; the potential for unexploded ordnance; effects on former landfill sites and the presence of landfill gas; and the effects on highways.
- 5.16.2. The ES [APP-085] identifies the Proposed Development may be vulnerable to incidents during stages 1, 2 and 3 including, amongst other things, striking of underground and ground level services and utilities, increased road traffic accidents, discoveries of unexploded ordnance, flooding and contamination.
- 5.16.3. However, the ES [APP-085] identifies that adequate mitigation measures are contained within the Recommended DCO on a variety of matters, but which would also reduce the risk of major accidents. It also states that the Applicant, being the operator of major and critical infrastructure, has a Major Accident Prevention Plan to deal with such incidents should they occur. Stage 4 decommissioning effects have not been assessed as it cannot be known what the effects would be at this time. Consequently, the ES [APP-085] identifies no significant negative effect or risk to major accidents and disasters.

### **Examination and Conclusion**

- 5.16.4. No IP raised any concerns during the Examination on this matter, and the ExA did not consider it necessary to ask questions or raise the matter.
- 5.16.5. The SoCG signed between the Applicant and NYCC and SDC [AS-136] confirms that the Applicant has adequately considered the implications of major accidents and disasters in the context of the Proposed Development, and that NYCC and SDC have taken a pragmatic approach to the consideration and assessment of these issues and do not have any additional queries or concerns with them. There are no outstanding matters to be resolved with regard to major accidents and disasters
- 5.16.6. The ExA is content that the Proposed Development accords with all legislation and policy requirements and that accident and disaster mitigation matters are adequately provided for and secured in the Recommended DCO and through existing measures. The effect in the planning balance is neutral.

## **5.17. STATUTORY NUISANCE AND HUMAN HEALTH**

### **Background**

- 5.17.1. Section 79 of the Environmental Protection Act (EPA) identifies the matters which are potentially statutory nuisance. These are summarised below:

- Any premises in such a state as to be prejudicial to health or a nuisance in respect to landscape and visual;
- noise, smoke, fumes or gases, dust, steam, smell or other effluvia arising from a premises or activities so as to be prejudicial to health or a nuisance; and
- artificial light emitted from premises so as to be prejudicial to health or a nuisance.

5.17.2. While not assessed in its own chapter the ES, each relevant Chapter includes a statement on nuisance along with a Statutory Nuisance (SN) Statement [APP-063]. It identifies potential significant effects on landscape and visual matters to recreational users of the Trans Pennine Trail and other PRoW within 3km of the Proposed Development during Stages 1 – 3, and users of the local road network within 1 km of the Proposed Development only in circumstances where poor levels of housekeeping or maintenance are applied.

5.17.3. In order to prevent or minimise risk of any statutory nuisance from occurring through poor maintenance, the SN Statement [APP-063] operational and management controls would be put in place such as the establishment of a maintenance strategy and waste management procedures, working in accordance with the EP and the Applicant's environmental management system and implementing the measures set out in the Outline LBS [APP-135] updated at D2 [REP2-026], at D6 [REP6-009], at D7 [REP7-007] and at D9 [REP9-008] which is secured by Requirement 8 of the Recommended DCO. Additionally, Article 39 of the Recommended DCO would provide a defence, subject to certain criteria, to proceedings in respect of statutory nuisance falling within subparagraph of s79(1)(g) of the EPA. No other potentially significant impacts have been identified.

### **Examination**

5.17.4. FofE Selby in its RR [RR-293] states that the Proposed Development would block light within the community and would have a profound effect on the lives of people. These comments were not substantiated further in the Examination and given the presence of Requirement 10 of the Recommended DCO (then Requirement 9 of the draft DCO [AS-012]) the ExA did not consider it necessary to raise questions on the matter.

5.17.5. The ExA noted the wording of Requirement 9 of the draft DCO [AS-012] and at the ISH on the draft DCO held on Thursday 6 December 2018 [EV-014], asked IPs whether it would be sensible to separate temporary and permanent lighting from one another. The Applicant orally agreed to do this and amended the wording to the Requirement in its D5 submission [REP5-011]. NYCC and SDC confirmed in its response at D6 [REP6-016] that it was content with the revised wording.

### **Conclusion**

5.17.6. The ExA is satisfied that the defences provided are appropriate to the nature and benefit of the proposed development and that proper controls and mitigation would be in place to manage down the risks of nuisance

impacts. The ExA is therefore satisfied that the Proposed Development would have no significant negative effects in respect to statutory nuisance and human health, and that adequate measures are provided for and secured by Requirements 8, 10, 17 and 20 in the Recommended DCO. The effect in the planning balance is neutral.

## **5.18. CONSIDERATION OF ALTERNATIVES**

### **Background**

- 5.18.1. The examination of the consideration of alternatives is undertaken on the basis that the SoS agrees with the Applicant and determines that the 'do-nothing' alternative scenario, whereby consent for the Proposed Development is withheld and either existing Units 5 and 6 operate at a lower intensity, or cease operating by 2025, is not acceptable.
- 5.18.2. Paragraph 4.4.2 of NPS EN-1 requires the Applicant to consider alternatives to the Proposed Development and explain how the Application was arrived at.
- 5.18.3. In accordance with EIA Regulations, ES Chapter 4 [APP-072] presents an outline of alternatives studied by the Applicant on matters such as locations for the Proposed Development, gas connection routes and fuel sources. With the exception of the latter point, no IPs raised any concern with the chosen locations and technologies for the Proposed Development.
- 5.18.4. For the gas pipeline route, the ES [APP-072] states that six routes were initially considered including the selected route. The other routes were discounted owing to, amongst other things, complications in their construction and the need to avoid or significantly reduce the need to cross watercourses, roads and other major infrastructure. Other reasons given include land ownership issues; the need to minimise the distance between the power station and the NGG Feeder pipeline and thus reduce the amount of land required for CA and TP; and to avoid close proximity to residential properties; heritage assets; and tree and hedgerow losses.
- 5.18.5. In respect to the fuel source, the ES [APP-072] states that only biomass and natural gas are technically feasible fuel sources for the Proposed Development. Biomass was discounted because it is not financially viable owing to Government changes in grants and financing. The ES [APP-072] further states that it only considered two alternatives to biomass and gas; those being waste and nuclear. Waste was not considered viable to generate the substantial amount of power necessary, while nuclear was not considered appropriate for the site.

### **Examination**

- 5.18.6. The ExA deemed further examination of alternative locations for Units X and Y was unnecessary, because the existing site is an obvious choice. This is because:
  - It has a long history of power generation;

- it is a re-use of the site and equipment including the cooling infrastructure;
- the site has excellent electrical grid, and transport links and is a brownfield site which is considered more attractive to redevelop for large scale power generation than a greenfield one;
- the site is in the freehold ownership of the Applicant; and
- the proposed locations of Units X and Y cannot reasonably be located on other land parcels within the existing Drax compound having regard its constrained nature and the presence of numerous large and operational infrastructure.

5.18.7. The ExA accepts that Route Option 4, the route chosen by the Applicant, is the most appropriate gas pipeline route as being the least-worse for constraints and distance to the NGG Feeder 29 gas pipeline. Subsequently, the site for the AGI is also an obvious choice because of its proximity to the connection point of NGG Feeder 29. In the absence of any IP raising concerns, the ExA had no reason to question the choice of route or siting of the AGI during the Examination; and is satisfied that it has been properly assessed.

5.18.8. Mr May in his RR [RR-298] states that he had concerns that the Applicant had not adequately considered renewable gas sources such as biogas or synthetic gas as an alternative. We put that to the Applicant in WQ ANC 1.3 [PD-006]. The Applicant responded [REP2-035] stating that both biogas and synthetic gas are unavailable in the quantities necessary to power the Proposed Development, and furthermore, there is currently no national transmission system for either technology to connect into and no agreed technical specification for them exist. Mr May did not raise this further in WRs. The ExA was satisfied with the response given by the Applicant on this point.

5.18.9. As part of the same question, the ExA asked [PD-006] whether nuclear and waste represented a reasonable assessment of alternatives. The Applicant responded [REP2-035] stating that they did, and that they have met the requirements of examining alternative fuel sources as advocated by NPS EN-1. The ExA was satisfied with this response.

5.18.10. The SoCG signed between the Applicant and NYCC and SDC [AS-136] and with NE [REP1-004] confirms that all reasonable alternatives have been adequately explored and that there are no outstanding matters of disagreement on this matter.

### **Conclusion**

5.18.11. Taking these matters into consideration, the ExA is satisfied that the alternative options for the siting of the proposed Units X and Y and route corridor for Work No 7 (gas pipeline) have been rigorously tested by the Applicant. The requirements of NPS EN-1 and the EIA Regulations in this regard have been met. The re-use of the existing site for energy generation is considered to have a positive effect in the planning balance.

## **5.19. CUMULATIVE AND COMBINED EFFECTS**

### **Background**

- 5.19.1. The EIA Regulations requires an ES to include a project-level assessment of potentially significant effects of a proposed scheme. ES Chapter 17 [APP-085] examines the cumulative and combined effects of the Proposed Development. It defines both as follows:
- Combined effects are the interaction and combination of environmental effects of the Proposed Development affecting the same receptor; and
  - cumulative effects as the interaction and combination of environmental effects of the Proposed Development with other existing or approved projects affecting the same receptor.
- 5.19.2. The combined effects have been assessed in the ES under each of the subject chapters [APP-073] to [APP-084] and [REP6-003]. The methodology has been to identify a zone of influence of up to 15km, and a long list of plans and projects which may have impacts in combination with the Proposed Development were refined to a short-list of 52 projects which were examined. In summary, the ES Chapters individually conclude that there would be no in-topic combined effects from the Proposed Development on receptors, and ES Chapter 17 [APP-085] summarily concludes that there would be no significant negative effects across topic effects.
- 5.19.3. The cumulative effects have been assessed in ES Chapter 17 [APP-085]. The ES identifies potential significant cumulative effects during Stages 1, 2 and 3 on landscape character and visual amenity. This is discussed in the landscape and visual section above, but the ES [APP-085] concludes that such significant negative effects would not be capable of being wholly mitigated owing to the sheer size and scale of the infrastructure involved, but some mitigation is proposed within a 3km radius of the power station where the effects are higher. There would no other cumulative effects from the Proposed Development.

### **Examination**

- 5.19.4. No IPs raised any concerns on the cumulative and combined effects of the Proposed Development during the Examination. The ExA had only one concern in respect to an apparent contradiction in ES Chapter 17 [APP-085] over whether there would, or would not, be likely significant cumulative effects on European designated sites with Thorpe Marsh CCGT.
- 5.19.5. The Applicant provided a detailed clarification in its D2 response to our WQ BHR 1.9 [REP2-035], concluding that a precautionary approach was initially reported owing to the absence of detailed information on the predicted air quality effects of the Proposed Development. Instead, the Applicant states [REP2-035] that the conclusion in the ES [APP-085] should have been that no adverse effects on the integrity of European sites are predicted as a consequence of the effects of the Proposed



Development operating cumulatively with the effects of Thorpe Marsh CCGT or any other plans or projects.

- 5.19.6. The ExA also requested in WQ CO 1.11 [PD-006] IPs to comment on whether any additional other projects or plans should be included within the cumulative assessment since March 2018. The Applicant responded [REP2-035] stating that it had identified additional projects and plans, and in its updated cumulative assessment submitted at D3 response [REP3-023] it concludes that there are no significant in-combination cumulative effects associated with the projects and plans that have entered the planning system since March 2018, when considered with the Proposed Development and other developments identified in ES Chapter 17 [APP-085].
- 5.19.7. The SoCG signed between the Applicant and NYCC and SDC [AS-136] confirms that the approach taken to the assessment of cumulative effects in the ES [APP-085] and the update to the Cumulative Assessment submitted at D3 [REP3-023] is appropriate and proportionate and that the Applicant has taken account of the relevant planned and consented projects and agree with the conclusions to the assessments. There are no outstanding matters to be resolved with regard to cumulative effects.

### **Conclusion**

- 5.19.8. While undoubtedly the construction and demolition of the Proposed Development could cause likely additional effects particularly in landscape and visual matters, we are nevertheless satisfied that there are not likely to be any significant cumulative or combined effects from construction, operation and decommissioning activities. The Recommended DCO adequately provides and secures mitigation measures to minimise individual and cumulative effects. The effect in the planning balance is neutral.

## **6. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT**

### **6.1. INTRODUCTION**

- 6.1.1. This chapter of the Report sets out our analysis, findings and conclusions relevant to HRA. This will assist the SoS, as the Competent Authority, in performing his duties under Habitats Directive, as transposed in the UK through the Habitats Regulations.
- 6.1.2. Consent for the Proposed Development may only be granted if, having assessed the potential adverse effects the Proposed Development could have on European sites, the Competent Authority considers that it meets the requirements stipulated in the Habitats Regulations. The SoS for BEIS is the Competent Authority for the purposes of the Habitats Directive and Habitats Regulations for energy applications submitted under the PA2008. NE is the statutory nature conservation body (SNCB).
- 6.1.3. We have been mindful throughout the Examination of the need to ensure that the SoS has sufficient information as may reasonably be required to carry out his duties as Competent Authority. The ExA has sought evidence from the Applicant and the relevant IPs, including NE as the SNCB, through WQs [PD-006] and FWQs [PD-014] and at ISHs [EV-010] to [EV-013].
- 6.1.4. The ExA prepared a RIES [PD-017] during the Examination, with support from the Inspectorate's Environmental Services Team. The purpose of the RIES was to compile, document and signpost information provided in the Application and information submitted by the Applicant and IPs during the Examination (up to and including D7 of the Examination (20 February 2019)) in relation to potential effects on European sites. The RIES was published on the Inspectorate's website on 28 February 2019, with IPs, including NE, being notified of this. Consultation on the RIES was undertaken between 28 February 2019 and 21 March 2019. The RIES was issued to ensure that IPs, including NE, had been consulted formally on Habitats Regulations matters. This process may be relied on by the SoS for the purposes of Regulation 63(3) of the Habitats Regulations.
- 6.1.5. The only comments provided on the RIES were received from the Applicant. The RIES was not updated following consultation.

### **6.2. EUROPEAN SITES AND THEIR QUALIFYING FEATURES**

- 6.2.1. The Proposed Development is not connected with, or necessary to, the management for nature conservation of any of the European sites considered within the Applicant's HRA report [APP-134].

- 6.2.2. The Applicant provided an HRA report [APP-134] with the Application, which identified a total of 10 European sites for inclusion within the assessment. As a result of the ExA's questions during the Examination and also following a non-material change request for proposed design amendments submitted by the Applicant at D3 [REP3-001], updates to the Applicant's HRA report were provided to the Examination at D3 [REP3-017] and at D6 [REP6-006], alongside updated HRA screening and integrity matrices [REP6-007] and [REP6-008]. Unless otherwise stated, references below to the Applicant's HRA report are to the latest revised HRA report [REP6-006]. The updates to the HRA report did not result in changes to the European sites considered in the Examination, although there was some discussion in respect to the qualifying features during the Examination, which is described further below.
- 6.2.3. The proposed Order Limits of the Drax Re-Power project do not overlap with any European site. The nearest European site is approximately 800m to the north east of the Power Station Site. The relationship between the proposed Order Limits and the European sites considered is shown on Figure 2.1 of the HRA report [REP6-006].
- 6.2.4. The HRA report [REP6-006] identified an initial zone of influence (ZoI) within which the Proposed Development could conceivably impact European sites, either alone or in-combination with other plans and projects. This ZoI was set at 15km from the centre of the stacks of the proposed gas turbines within the boundary of the Proposed Development.
- 6.2.5. The HRA report [REP6-006] confirmed that this corresponded to the maximum extent of air quality modelling, with air quality impacts predicted to have the largest ZoI of all potential impacts. The 15km ZoI for air quality is applied because the HRA report contends that at distances beyond 15km, the air quality impacts of the Proposed Development become effectively indiscernible from background air quality. Other potential effects, including disturbance effects to species using functionally linked land and hydrological links to European sites and functionally linked land, were considered and assessed within this ZoI. The SoCG signed between the Applicant and NE [REP1-004] confirms NE's agreement that beyond 15km there are no conceivable impact pathways by which the Proposed Development could adversely affect European sites.
- 6.2.6. Accordingly, the 10 European sites for inclusion within the HRA report [REP6-006], are as follows:
- Lower Derwent Valley Special Area of Conservation (SAC);
  - Lower Derwent Valley Special Protection Area (SPA);
  - Lower Derwent Valley Ramsar;
  - River Derwent SAC;
  - Humber Estuary SAC;
  - Humber Estuary SPA;
  - Humber Estuary Ramsar;
  - Skipwith Common SAC;
  - Thorne and Hatfield Moors SPA; and

- Thorne Moor SAC.

- 6.2.7. The full list of these sites and their qualifying features is included at Annex 2 to the RIES and presented in the Applicant's HRA Screening and Integrity Matrices [REP6-007] and [REP6-008].
- 6.2.8. In our WQ BH 1.18 [PD-006], we queried a number of qualifying features listed in the Applicant's original HRA report and screening and integrity matrices [APP-134], as several discrepancies were noted between the features identified in Tables 2-1 to 2-9 of the HRA report [APP-134] and those presented in the matrices. The Lower Derwent Ramsar was missing from the summary tables; river lamprey was missing as a qualifying feature for the River Derwent SAC in Table 2-3; and other qualifying features were missing from the Applicant's matrices.
- 6.2.9. In response to the ExA's question and representations made by IPs during the Examination, the Applicant provided revised HRA screening and integrity matrices at D2 (see BHR 1.18 - Appendix C to the Applicant's Responses to WQs [REP2-035]) and an updated HRA report was subsequently provided at D3 [REP3-017]. The Applicant confirmed in its response to WQs [REP2-035] that the conclusions in the HRA report are not affected by the amendments to the tables and matrices.
- 6.2.10. NE confirmed in its response to the ExA's WQs [REP2-045] that it was in receipt of an updated HRA report in which river lamprey has been correctly added to Table 2.3 (River Derwent SAC) and that correct qualifying features have been identified for the European sites identified in Tables 2-1 to 2-8.
- 6.2.11. No concerns were raised by other relevant IPs in relation to the European sites and qualifying features considered by the Applicant in its HRA report [REP6-006].
- 6.2.12. The Applicant did not identify any potential impacts on European sites in any other European Economic Area (EEA) State. No comments relating to European sites within another EEA State were received during the Examination.
- 6.2.13. We are satisfied that the Applicant has correctly identified all of the relevant European sites and relevant qualifying features for consideration within the HRA.

## **6.3. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)**

- 6.3.1. Sections 2.1 and 2.2 of the HRA report [REP6-006] outline the Applicant's approach to HRA screening, including how the Applicant identified European sites for inclusion in the screening assessment. The Applicant confirmed in the HRA report [REP6-006] that their Stage 1 screening had been carried out without taking account of the measures intended to avoid or reduce the harmful effects of the project on European Sites in accordance with the recent European Court of Justice

case in *People Over Wind and Sweetman v Coillte Teoranta* (Case 323/17).

- 6.3.2. Having identified the 10 European sites within the ZOI and assessed their qualifying features and had regard to their conservation objectives, the HRA report [REP6-006] discounts a number of potential impacts (for example, direct physical impacts within the boundary of European Sites). The qualifying features and potential impacts screened out on the basis of no likely significant effects are presented in the HRA screening matrices [REP6-007].
- 6.3.3. The HRA report [REP6-006] identified the following impacts with the potential to result in likely significant effects:
- Impacts resulting in disturbance to qualifying features (specifically otters and fish species) using functionally-linked habitat (light/noise/vibration/visual);
  - impacts resulting in hydrological changes to functionally-linked habitat (quality/flow) and effects on species using functionally linked land (specifically otter and fish species);
  - impacts resulting in changes to air quality; and
  - in-combination effects.
- 6.3.4. It was determined that all 10 European sites identified required further consideration through Stage 2 of the HRA process, to establish if adverse effects on the integrity of these sites from the Proposed Development could be ruled out [REP6-006]. Annex 2 of the RIES summarises the European sites and qualifying features carried forward to consideration of adverse effects on integrity.

## **In-Combination Effects**

- 6.3.5. The Applicant's approach to assessing in-combination/cumulative effects is outlined in Section 3.3 of the HRA report [REP6-006] and in ES Chapter 17 [APP-085]. Table 3-1 of the HRA report [REP6-006] lists the other plans and projects identified as being relevant to the in-combination assessment. A total of 43 projects were screened in the HRA report. Of these, potential in-combination effects were identified with the following two projects:
- Eggborough CCGT generating station; and
  - Thorpe Marsh Power Station.
- 6.3.6. Both projects were identified for their potential to give rise to operational emissions, which could potentially combine with those from the Proposed Development leading to in-combination cumulative effects that could be significant. Emissions from Eggborough and Thorpe Marsh CCGTs were therefore considered quantitatively as part of the cumulative assessment and are reported in ES Chapter 6 [APP-074].
- 6.3.7. Knottingley Power Project and Ferrybridge D CCGT are two further major point source emitters located beyond 15km of the Proposed Development but within 15km of European Sites within the Proposed Development's

ZoI. Therefore, they were considered qualitatively within the Applicant's air quality assessment. Ultimately, the Applicant concluded that at these distances any in-combination impacts would be imperceptible and significant effects are not likely [REP6-006].

- 6.3.8. NE's RR [RR-212] and the SoCG between the Applicant and NE [REP1-004] did not identify any areas of concern with regards to the Applicant's approach to the in-combination assessment.

## **Screening Conclusion**

- 6.3.9. All 10 European Sites were identified as requiring further consideration through Stage 2 of the HRA process for the potential effects listed above [REP6-006].
- 6.3.10. The conclusion of potential likely significant effects on the 10 European sites and specific qualifying features, as identified in the screening matrices and Annex 2 of the RIES, was not disputed by any IPs during the Examination. The Applicant's conclusion of no likely significant effects on all other qualifying features of the 10 European sites considered by the Applicant in its HRA report and as presented in its screening matrices was also not disputed by any IPs during the Examination.
- 6.3.11. The ExA is content that all relevant potential impacts have been identified and assessed by the Applicant in the HRA Report.

## **6.4. CONSERVATION OBJECTIVES**

- 6.4.1. The Applicant provided the conservation objectives for the European sites in Tables 2-1 to 2-10 of the HRA report [REP6-006].

## **6.5. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)**

- 6.5.1. The Applicant [REP6-006] concluded that the Proposed Development would not adversely affect the integrity of the European sites and qualifying features considered in their Stage 2 assessment. Evidence for the conclusions reached on integrity are detailed within Sections 5 and 6 of the HRA report [REP6-006], together with the footnotes of the updated HRA integrity matrices submitted for D6 [REP6-008].
- 6.5.2. NE did not respond to the consultation on the RIES. However, it confirmed at an early stage of the Examination that it considered that the Applicant has submitted a thorough ES which it states it is:
- *"satisfied that it demonstrates beyond reasonable scientific doubt that there would be no significant effect on the integrity of any European sites" and "does not consider that the proposal is likely to have a significant impact on any nationally or internationally designated nature conservation sites or nationally designated landscapes, and that sufficient mitigation measures have been put in place to avoid significant impacts on protected species." [RR-212].*

6.5.3. There were however, several matters that were discussed further during the Examination and these are described further below, alongside a summary of the Applicant's assessment.

6.5.4. The consideration of adverse effects on integrity can be divided into two categories, which are described separately below:

- The consideration of air quality effects; and
- habitat disturbance and hydrological effects on species using functionally linked land. We have taken each one in turn below.

## **Air Quality Effects**

### **Background**

6.5.5. ES Chapter 6 [APP-074] and accompanying Appendix 6.3 [APP-100] presents the assessment of impacts arising from the Proposed Development on air quality, including potential effects on European sites as submitted with the Application. It includes dispersion modelling and stack height sensitivity testing [APP-100]. As described in Chapter 5, of this Report, the ES includes a quantitative assessment of stack emissions resulting from the operation of the Proposed Development using various scenarios. It assesses impacts associated with both OCGT and CCGT operation of the proposed new gas-fired units. It also assesses impacts associated with both secondary abatement technology applicable to the CCGT technology (namely SCR) and primary abatement (namely operation controls). The DCO allows for either scenario as the need for SCR would be determined by the EA as part of the separate EP process. The air quality assessment for the Proposed Development also assessed impacts from increased emissions occurring in-combination with other developments located within 15km (as described above).

6.5.6. The methodology applied to the Applicant's assessment of air quality is described in Section 6.3 of ES Chapter 6 [APP-074], and is supported by the air quality technical appendices, specifically Appendix 6.3 Air Dispersion Modelling [APP-100].

6.5.7. Of the scenarios assessed in the ES, Scenarios A1 and A2 (set out above) model the impacts of the operation of Units X and Y with continuous operation in CCGT and OCGT respectively, but without the use of secondary (NO<sub>x</sub>) abatement technology. Scenario B considers the continuous operation of Units X and Y with secondary abatement for NO<sub>x</sub>. Scenarios C and D represent the cumulative assessments corresponding to Scenarios A1 (CCGT, no NO<sub>x</sub> abatement) and B (NO<sub>x</sub> abatement in line with the ammonia cap). ES Chapter 6 [APP-074] confirms that Scenarios A1 and C provide the worst case for the Proposed Development alone (A1) and cumulatively (C) in respect of NO<sub>x</sub> emissions and impacts on ambient concentrations of NO<sub>x</sub> and NO<sub>2</sub>. It is noted that in the CCGT assessment scenarios where SCR is not used, no ammonia (NH<sub>3</sub>) would be emitted.

6.5.8. The HRA report collates the information from the ES [APP-074], specifically in relation to air quality impacts on European sites. The

updated version [REP-006] provided at D6 was submitted to reflect the revised air quality modelling, which in turn reflected the Applicant's non-material amendment application set out in the Assessment of Non-Material Amendments to Proposed Scheme document [REP3-022]. The HRA report [REP6-006] states that *"the changes in the air quality modelling outputs are very minor and have no material effect on the conclusions of the HRA report."* Nevertheless, an update was provided to reflect the parameter changes, as reflected in the Recommended DCO.

- 6.5.9. As described above, the HRA report considers the potential for adverse effects on the integrity of the 10 European sites identified within a 15km ZOI from the Proposed Development. Further detail in relation to the European sites and the features identified as vulnerable to air quality changes are presented in Appendix 2 [REP6-006] and in the footnotes of the updated HRA integrity matrices submitted for Deadline 6 [REP6-008].
- 6.5.10. The Applicant's HRA addresses the following air quality effects, both alone and in-combination with other projects:
- Increased ammonia concentrations;
  - increased atmospheric concentrations of NO<sub>x</sub> (hourly and annual mean concentrations);
  - increased nitrogen deposition; and
  - increased acid deposition (sulphur and nitrogen).
- 6.5.11. Baseline air quality conditions and site-specific critical loads and levels are presented in Table 6-1 of the HRA report [REP6-006], alongside information on vulnerabilities and potential impact pathways to the European sites. The HRA report identifies that all European sites, except the River Derwent SAC, are exceeding their site-relevant critical load/levels for one or more of the air quality categories (i.e. ammonia, nitrogen deposition and/or acid deposition) (see Table 6-1 of the HRA report [REP6-006]). All 10 European sites are exceeding their critical levels/loads for nitrogen deposition. For NO<sub>x</sub>, the critical levels are independent of the habitat type and set at 30µg/m<sup>3</sup>. None of the European sites are exceeding the critical levels for NO<sub>x</sub>.
- 6.5.12. Paragraph 6.3.5 of the HRA report [REP6-006] explains the realistic worst-case scenarios applied to the assessment; these are Scenario A1 - CCGT operation with low NO<sub>x</sub> emissions (50mg/Nm<sup>3</sup>); and Scenario B - CCGT operation with SCR (NO<sub>x</sub> emissions at 30mg/Nm<sup>3</sup>).
- 6.5.13. The results of the air quality modelling for European sites arising from the worst-case scenarios (Scenarios A1 and B) are presented in Tables 6-2 to 6-6 of the HRA report [REP6-006]. These present the Process Contribution (PC) of the Proposed Development and Predicted Environmental Concentrations (PEC) (i.e. PC plus background concentrations) on levels of NO<sub>x</sub>, ammonia, nitrogen deposition, and acidification. Tables 6-7 to 6-11 present the in-combination air quality modelling results for all ten sites for the realistic worst-case scenarios (Scenarios C and D). Predicted NO<sub>x</sub> impacts for each of the 10 European Sites are summarised in Table 6-12 [REP6-006], with a description of NO<sub>x</sub> effects provided in Paragraphs 6.3.10 and 6.3.11. A descriptive



assessment of deposition effects and ammonia are included in subsequent sections the HRA report from Paragraph 6.3.13 onwards [REP6-006].

- 6.5.14. Following EA guidance, ES Chapter 6 [APP-074] and the HRA report [REP6-006] apply a 1% screening threshold to determine the level of significance of effect on designated sites. Therefore, where the Proposed Development (either alone or in-combination with other plans or projects) would increase emissions by less than 1% of the relevant critical level, this is considered insignificant and impacts are not considered to result in likely significant effects. The SoCG with EA [REP9-009] records agreement with the use of this threshold and confirms that it is accepted by the EA and NE as a threshold below which the magnitude of an effect is judged to be so low as to be inconsequential and can robustly and reasonably be taken to result in no likely significant effect when applied to HRA screening. It confirms that this is a screening threshold for guidance and to determine insignificant effects and also that it does not mean that any predicted PC above the 1% threshold is significant. It states that *"A change of more than 1% does not necessarily indicate that a significant effect (or adverse effect on integrity) will occur; it means that the change in effect cannot on its own be described as imperceptible and therefore requires further consideration."*
- 6.5.15. Emissions from the Proposed Development operating both with and without SCR would further increase NO<sub>x</sub> levels over the 10 European sites considered. However, the assessment also demonstrates that the increased levels would not in themselves result in an exceedance of the critical level of NO<sub>x</sub> at any European site (either alone or in combination) (see Tables 6-12). Therefore, the relatively small-scale increase in NO<sub>x</sub> levels above the existing critical level exceedance are not predicted to lead to any adverse effects on any European sites.
- 6.5.16. The summary below addresses each European site in turn looking specifically at the findings of the HRA report [REP6-006] for air quality effects (excluding NO<sub>x</sub> discussed above). Evidence for the conclusions reached on integrity are detailed within Sections 5 and 6 of the HRA report, together with the footnotes of the updated HRA integrity matrices submitted for D6 [REP6-008].

#### **River Derwent SAC**

- 6.5.17. The Applicant's air quality modelling presented in the HRA report [REP6-006] shows that while the 1% threshold is exceeded for ammonia deposition both alone (1.1% for Scenario B) and in-combination (2.0% for Scenario D), the Proposed Development would not lead to exceedances of the critical loads/levels for ammonia at this site alone or in-combination with other projects. The Applicant also considers the 1.1% to be analogous with an impact of 1% if the critical level, due to inherent uncertainty and conservatism built into the model. The River Derwent and River Ouse (adjacent to the Proposed Development and hydrologically connected to the Derwent) are not considered to be sensitive to nitrogen deposition and associated acidification. The HRA

report [REP6-006] explains that the two rivers are also phosphate limited and therefore additional inputs of nitrogen are unlikely to lead to any perceptible eutrophication effects on SAC freshwater habitats. It also discusses the underpinning SSSIs within 15km of the Proposed Development (River Derwent SSSI and Newton Mask SSSI) and their condition. The HRA report states their 'favourable' and 'unfavourable recovering' condition demonstrates that the high levels of nutrient nitrogen are only likely to be having a limited, if any, effect on habitats within the European site. On this basis the HRA report concludes no adverse effects on the integrity of the River Derwent SAC due to changes in air emissions arising from the Proposed Development under any scenario, both alone or in-combination.

### **Lower Derwent Valley SAC, SPA and Ramsar**

- 6.5.18. The Applicant's air quality modelling presented in the HRA report [REP6-006] shows that the Proposed Development alone would not lead to exceedances of the critical loads/levels for ammonia, nitrogen deposition, and acid deposition at this European site under any scenario.
- 6.5.19. In-combination, the maximum predicted cumulative impact using secondary abatement would be a 1.4% increase to the critical level for ammonia. This does not result in an exceedance of the critical level for ammonia at this site. The maximum predicted cumulative impact for acid deposition would be 0.5% increase (Scenario D). This also does not exceed the critical load/level for acid deposition at this site. The maximum predicted cumulative impact for nitrogen deposition would be a 1.6% increase to the critical load/level. The HRA report [REP6-006] concludes that this represents a *de minimus* in-combination effect. The HRA report also refers to the reducing impact of nitrogen deposition with distance, the condition and area of the nearest SSSIs within 15km (Brighton Meadows SSSI and Derwent Ings SSSI), and the phosphate limited nature of the River Derwent, coupled with the conservatism built in to the air quality assessment, which is identified as follows:
- Continuous full load operation for the year;
  - 70% conversion of NO<sub>x</sub> to NO<sub>2</sub>;
  - assessment of maximum impacts anywhere in a designated site, irrespective of area and the presence of particular habitats;
  - assessment against the lower threshold of recommended critical loads
  - assessment of maximum impacts across 5 modelled years; and
  - emissions continually occurring at the limit set in the IED / BReF conclusions and or recommended emissions ceiling.
- 6.5.20. The HRA report [REP6-006] concludes no adverse effects on the integrity of the Lower Derwent Valley SAC, SPA and Ramsar under any scenario, both alone and in-combination.

### **Humber Estuary SAC, SPA and Ramsar**

- 6.5.21. The Applicant's air quality modelling [REP6-006] shows that the Proposed Development would not lead to exceedances of the critical loads/levels

for ammonia and nitrogen deposition. The European site is also not sensitive to acid deposition. The HRA report [REP6-006] concludes that there would be no adverse effects on these European sites under any scenario, both alone or in-combination.

### **Skipwith Common SAC**

- 6.5.22. The Applicant's air dispersion modelling presented in the HRA report [REP6-006] shows that background levels at this European site is already exceeding the critical loads/levels for ammonia, nitrogen deposition and acid deposition. The modelling shows that the Proposed Development would make a minor contribution to the exceedance of ammonia when operating using secondary abatement (i.e. Scenarios B and D). The Proposed Development would contribute a 0.4% increase above the critical load in the context of the existing exceedance of 242% of the critical load/level, with the PC contributing equating to 0.17% of background levels. The Proposed Development would not lead to significant nitrogen or acid deposition alone (a modelled maximum PC of 0.4% and 0.3% respectively).
- 6.5.23. In-combination, the maximum predicted in-combination impact using secondary abatement would be a 2.7% increase in the critical load/level for ammonia, with the Proposed Development contributing 0.4% of this increase. The maximum predicted in-combination impact for nitrogen deposition would be up to a 1.9% increase to the critical load/level (Scenario D) and for acid deposition up to a 1.6% increase (Scenario D).
- 6.5.24. The HRA report [REP6-006] also addresses research into the effects of nitrogen deposition on heathland habitats, including a NE Commissioned Report Number 210 (2016). The HRA report confirms that in this study:
- *"with background deposition rates of 20 kgN/ha/yr (comparable to estimated baseline deposition rates at Skipwith common SAC), adding a further 1 kgN/ha/yr was shown to decrease species richness by between 1.4% and 1.9%. Graminoid (grass) cover was found to increase by between 0.8% and 1.1%. The maximum species richness recorded varied between 16 and 32. Taking a worst-case species richness from the above of 16, an impact equivalent to 3.26 kgN/ha/yr would theoretically be required to reduce species richness across the SAC by an average of one species (per quadrat). The maximum predicted cumulative impact of the Proposed Scheme with other plans and projects is 0.19 kgN/ha/yr, equivalent to approximately 6% of the amount required to reduce species richness by an average of one species per quadrat. This level of deposition falls within the bounds of natural variation and is predicted to lead to negligible (and imperceptible) vegetative change across the SAC."*
- 6.5.25. The worst-case in-combination impact of acid deposition is stated to be a 1.6% increase, with the contribution from the Proposed Development being a maximum of a 0.3% increase (Scenario D) which would diminish with increasing distance from the Proposed Development. The HRA report [REP6-006] states that no perceptible vegetative change to SAC habitats

is predicted to arise from this level of deposition and expands on the use of the 1% threshold as a measure for screening. The HRA report concludes that:

- *"The contribution of the Proposed Scheme, whether assessed alone or in combination with other industrial processes, is largely insignificant and a relatively small proportion of the total deposition. The risk of exceedance of critical loads and the level of exceedance of the critical loads is a function of the rates of background deposition rather than the result of the operation of the Proposed Scheme. In other words, the Proposed Scheme would make no difference to the exceedance of critical loads and levels for the European Sites within 15 km of the Proposed Scheme."*

6.5.26. The HRA report [REP6-006] identifies the conservatism built into the assessment, as previously identified above. It also discusses the condition of the underpinning SSSIs: 47.96% of the constituent SSSI units were reported as being in 'favourable' condition, the remaining value of 52.04% was recorded as being in 'unfavourable – recovering' condition in the most recent condition assessment. The HRA report discusses that data on the UK Air Pollution Information System (APIS) indicates that that approximately 8.6% of nitrogen deposition onto Skipwith Common SAC arises from road transport and that future reductions in emissions from the UK vehicle fleet would therefore reduce these inputs. It also adds for comparison that the *"source attribution data on APIS identifies the Existing Drax Power Station Complex as contributing approximately 1.5% of total nitrogen deposition."*

#### **Thorne Moor SAC and Thorne and Hatfield Moor SPA**

6.5.27. The Applicant's air dispersion modelling presented in the HRA report [REP6-006] demonstrates that background levels at these European sites are already exceeding the critical loads/levels for ammonia, nitrogen deposition and acid deposition. The modelling shows that the Proposed Development would make a minor contribution to the existing exceedance of ammonia when operating using secondary abatement (i.e. Scenario B). The Proposed Development alone would contribute a 0.4% increase to the critical load/level in the context of the existing exceedance of 239% of the critical load/level, with the PC equivalent to 0.2% of background levels. The Proposed Development would not lead to significant nitrogen or acid deposition alone (a modelled maximum PC of 0.8% and 0.6% respectively).

6.5.28. In-combination, the maximum predicted in-combination impact using secondary abatement (Scenario D) would be 1.3% of the critical level for ammonia, with the Proposed Development contributing 0.4% of this. The HRA report [REP6-006] concludes that this is only marginally above 1% of the critical level at the point of greatest predicted impact, that no perceptible effects on SAC habitats are predicted to arise; and in respect to the SPA, that the suitability of the habitats present to support nightjar is not expected to be subject to perceptible change.

- 6.5.29. The maximum predicted in-combination impact for nitrogen deposition would be an increase of up to 2.6% of the critical load (Scenario D) and for acid deposition up to 2.0% (Scenario D), with the Proposed Development contributing 0.8% and 0.6% respectively. As for Skipwith Common SAC, the HRA report [REP6-006] expands on the NE Commissioned Report Number 2010, stating:
- *"In this study, with background deposition rates of 20 kg N/ha/yr (comparable to estimated baseline deposition rates at Thorne Moor SAC), adding a further 1 kg N/ha/yr was shown to decrease species richness by 0.9%. Graminoid (grass) cover was found to increase by 1.5%. The maximum species richness recorded across the studies examined in was 32 (Caporn et al. 2016; Ref 5). Taking a species richness from the above of 32, an impact equivalent to 3.3 kgN/ha/yr would theoretically be required to reduce species richness across the SAC by an average of one species (per quadrat). The maximum predicted in-combination impact of the Proposed Scheme with other plans and projects is 0.13 kgN/ha/yr, equivalent to approximately 3.9% of the amount required to reduce species richness by an average of one species per quadrat. This level of deposition falls within the bounds of natural variation and is predicted to lead to negligible (and imperceptible) vegetative change across the SAC."*
- 6.5.30. The worst-case in-combination impact of acid deposition is above 1% (at 2.0%), with the contribution from the Proposed Development diminishing with increasing distance from stacks. The HRA report [REP6-006] concludes that no perceptible vegetative changes of SAC habitats are predicted to arise from this level of deposition, in the context of the baseline deposition levels.
- 6.5.31. The HRA report [REP6-006] concludes that the contribution of the Proposed Development, whether assessed alone or in-combination, is insignificant and would constitute a relatively small proportion of the total deposition. It states that:
- *"the risk of exceedance of critical loads and the level of exceedance of the critical loads is a function of the rates of background deposition rather than the result of the operation of the Proposed Scheme. In other words, the Proposed Scheme would make no difference to the exceedance of critical loads and levels for the European sites within 15km of the Proposed Scheme."*
- 6.5.32. The HRA report [REP6-006] refers to the conservatism built into the assessment, as previously identified above. It also discusses the condition of the underpinning SSSIs: 3.85% of the Thorne, Crowle and Goole Moor SSSI was reported as being in 'favourable' condition, with 91.97% recorded as being in 'unfavourable – recovering' condition. 2.94% was assessed as 'unfavourable no change' with 1.24% 'unfavourable declining'. The majority of the SAC is considered to be in 'unfavourable – recovering' condition by NE. The HRA report discusses that data on the UK APIS indicates that that approximately 10% of nitrogen deposition onto Skipwith Common SAC arises from road

transport and that future reductions in emissions from the UK vehicle fleet would therefore reduce these inputs. It also adds that *"For comparison, the source attribution data on APIS identifies the Existing Drax Power Station Complex as contributing approximately 1.7% of total nitrogen deposition."*

6.5.33. Having regards to the points raised above the Applicant concludes that there would be no adverse effects on the integrity of Thorne Moor SAC and Thorne and Hatfield Moor SPA, both alone or in-combination.

6.5.34. The Applicant [REP6-006] therefore concludes overall that no adverse effects (alone or in-combination) on the integrity of any European site are anticipated as a result of air quality changes arising from the operation of the Proposed Development under any scenario.

### **Examination**

6.5.35. As identified above, we discussed a number of matters relating to air quality during the Examination, focussing on influencing factors through the Proposed Development design parameters e.g. stack height and the application of mitigation measures including SCR and, an ammonia cap. These are described further below.

### **Stack Height**

6.5.36. The Applicant's HRA report [REP6-006] is informed by the air quality dispersion modelling [APP-100] and the stack height sensitivity testing presented in ES Chapter 6 [APP-074]. During the Examination, we noted a discrepancy between the stack height information in the Applicant's air quality assessments and the proposed stack height in the draft DCO [AS-012].

6.5.37. The Dispersion Modelling presented in ES Chapter 6 [APP-074] and ES Appendix 6.3 [APP-100] was undertaken with the stack heights for Units X and Y set at 120m. It did not specify whether this was fixed with reference to AGL or AOD. This assessment also states that the recommended 'minimum' stack height is 120m and that stack heights of greater than 120m are not operationally feasible with the implementation of the vertical Heat Recovery System Generators (HRSGs) [APP-100].

6.5.38. In the WQs AQ 1.11 [PD-006], we noted that Schedule 13 of the Applicant's draft DCO [APP-020] and [AS-012] identified the stack height to be a 'maximum' of 120m AGL and thus this implies that the stack could be constructed at a height less than 120m AGL. No minimum height had been specified in the draft DCO.

6.5.39. We requested that the Applicant in WQ AQ 1.11 [PD-006] confirm if the recommendation of 120m as stated in the Air Dispersion Modelling document [APP-100] is 120m AGL or AOD. Given that the HRA report [REP6-006] relies upon the ES air quality assessment and modelling, the Applicant was also requested to confirm whether the conclusion of the HRA would be affected if the stack height was constructed lower than 120m AGL.

- 6.5.40. In its response at D2 [REP2-035], the Applicant confirmed that the stack height modelled was at a height of 120m AGL, with the cooling towers modelled at 114m AGL. The Applicant confirmed that in order for the conclusions generated within the HRA report to remain robust, the stack height (for Units X and Y) would have to be fixed at a height not less than 120m (AGL) [REP2-035].
- 6.5.41. In its non-material change request [REP3-001] submitted at D3, the Applicant proposed to change some of the maximum parameters included in Schedule 13 of the draft DCO, and a revised draft DCO was submitted [REP3-007] and [REP3-008]. In addition to the proposed changes to parameters, the Applicant added additional tables (Tables 14 and 16) to Schedule 13 of the revised draft DCO [REP3-007] and [REP3-008] to allow for minimum parameters for the stacks, as requested by the ExA in the WQs [PD-006]. This was identified in the Applicant's Schedule of Changes at D3 [REP3-020].
- 6.5.42. The Applicant states that the proposed changes to stack height were due to the stack height of the existing cooling towers being confirmed as 116.5m rather than 114m AGL. To confirm that these changes did not affect the assessment of air quality impact as reported in the ES, the Applicant states [REP3-022] that they had rerun the air dispersion model to incorporate the latest information on structure dimensions and proposed stack heights, whilst maintaining the minimum height differential of 6m between the cooling towers and the stacks for Units X and Y. The revised modelling was based on the following height parameters:
- Stack heights for Units X and Y being 122.5m (AGL); and
  - cooling tower height 116.5m (AGL).
- 6.5.43. The Air Quality modelling data output was not provided by the Applicant at D3. Therefore, we issued a Procedural Decision on 21 December 2018 [PD-012] requesting the documents that the Applicant relied upon in the assessment of changes in order to draw the conclusion that the non-material change request in respect to design parameters would not result in a change to the likely significant effects of the Proposed Development, as described in the ES. The Applicant provided an Air Quality Technical Note [REP5-019] at D5, which presented the rerun air quality modelling results alongside the original modelling results from the ES. The note states that:
- *"the results show that, taken across all meteorological years, the slight increase in stack height results in a marginal reduction in the impacts of the repowered units but this has no significant impact on the conclusions of the assessment and does not change the significance of effects reached in the assessment."*
- 6.5.44. Subsequent to the submission of the technical note, the ExA identified in a FWQs BHR 2.3 [PD-014] that the project description in the updated HRA report submitted at D3 [REP3-017] includes reference to the amended stack height parameters at paragraph 1.2.16. However, the air quality modelling data presented in Section 6 of the HRA Report [REP6-

006], which is necessary for the purposes of the assessment, was not updated and continued to reference modelling data presented in ES Chapter 6 [APP-074]. We therefore requested that the Applicant provide a revised HRA report in FWQ BHR 2.3 [PD-014] or an addendum to the HRA report to reflect the description of the Proposed Development in light of the non-material change request submitted at D3 and to include the re-run air quality data.

- 6.5.45. This resulted in the submission of the further updated HRA report submitted by the Applicant at D6 [REP6-006]. The Applicant's Schedule of Changes [REP6-010] summarises the amendments. The Applicant's technical note [REP5-019] confirmed that the updated air quality modelling demonstrates that the change in stack height has a negligible effect on air quality. The updated HRA report [REP6-006] concludes as in previous versions that the Proposed Development would not have an adverse effect on the integrity of any of the European sites assessed.
- 6.5.46. NE did not respond to the consultation on the RIES. NE had previously provided agreement with the conclusions of the Applicant's HRA report in their RR [RR-202], at which point it states:
- *"The applicant has submitted a thorough Environmental Statement which we are satisfied demonstrates beyond reasonable scientific doubt that there would be no significant effect on the integrity of any European sites" and also in their SoCG [REP1-004], which states "With the implementation of either one of the avoidance and mitigation measures as set out generally in section 3.2, and specifically between paragraphs 6.3.24 and 6.3.26 of the HRA Report (Examination Library Reference APP-134) (being combustion control or use of SCR with an annualised ammonia budget), which are included as part of the Proposed Scheme, and which will be assessed further (in terms of likely emissions) via the Environmental Permitting process for the Proposed Scheme under The Environmental Permitting (England and Wales) Regulations 2016, there would be no adverse effects on the integrity of any European Site resulting from air quality impacts, as set out in Section 6.3 of the HRA Report (Examination Library Reference APP-134)."*
- 6.5.47. The amendments to the parameters have resulted in a marginal reduction in air quality and are considered to not affect the HRA conclusions. We therefore have no reason to believe NE's opinion with regard to the Applicant's HRA would have changed.

#### **Mitigation Measures, including Selective Catalytic Reduction (SCR) and the Ammonia Cap**

- 6.5.48. During the Examination, we queried in WQs and FWQs the likely timing and choice of abatement method, together with the EP and the delivery of BAT [PD-006] and [PD-014].
- 6.5.49. The Applicant's HRA report [REP6-006] considers the use of both secondary abatement (namely SCR) and primary abatement (namely operation controls) as mitigation measures to reduce NO<sub>x</sub> emissions from



the Proposed Development. This is also described in Section 3.2 of ES Chapter 3 [REP6-003], which indicates that the Recommended DCO seeks flexibility for the Proposed Development to operate with either option. The Applicant confirmed that an EP variation application under the EP Regulations was 'duly made' on 16 July 2018 [REP2-020].

- 6.5.50. At D2 of the Examination, it was pointed out by the EA [REP2-042] in their response to the ExA's WQs [PD-006] that the Applicant had not included secondary abatement with their EP application for the Proposed Development. The Applicant acknowledged [REP3-025] that this was the case but also confirmed that they had presented and discussed the proposed monitoring approach with the EA in a meeting held on 25 October 2018 and that furthermore, they have assessed scenarios both with and without SCR in the ES and demonstrated that the Proposed Development is capable of being adequately regulated under the EPR, either with or without SCR.
- 6.5.51. The EA also confirmed [REP2-042] in their response to WQ AQ 1.2 [PD-006] that they are:
- *"of the opinion that a project of this type and nature should be capable of being adequately regulated under the Environmental Permitting Regulations (EPR) and at this point the Environment Agency knows of no obvious errors or issues which would prevent a permit being granted at this time. However, as the permit application has not yet been fully assessed it would be premature to provide comments on whether or not a permit would be issued at this stage."*
- 6.5.52. At D4 of the Examination, it was highlighted that in December 2018 DEFRA made the decision that the BReF (Best Available Technique Reference documents) AEL document for new large combustion plant would apply to high efficiency CCGT generating stations (such as the Proposed Development) [EV-010] to [EV-013]; [REP4-012] and [REP6-013]. The Applicant confirmed [REP6-013] that they had anticipated this potential outcome by including SCR as a means of reducing NOx in its DCO Application and in the ES and HRA.
- 6.5.53. Following DEFRA's announcement, the Applicant confirmed its intention to apply to vary the EP variation application to accommodate both primary and secondary abatement options [REP6-013]. The Applicant stated that it intended to submit this in February/March 2019 [REP7-015] and once issued, emissions from either compliance route would be regulated by the EA through the EP.
- 6.5.54. The signed SoCG between the Applicant and the EA was submitted at D9 [REP9-009] and states that to guarantee achieving BReF levels, the use of secondary abatement technology, being SCR, may be required. This would achieve the reduction of NOx emissions by introducing ammonia as a catalyst. However, there would be a small release of ammonia from the emissions stack, called the 'ammonia slip'.

- 6.5.55. As part of the EA's determination of the EP application, an assessment of BAT will be undertaken for the Proposed Development. An EP application will only be successful if it demonstrates that the Proposed Development will incorporate BAT (for reducing emissions as defined in and prescribed under the relevant EU Directives). It is agreed that a technique cannot constitute BAT if it leads to unacceptable effects on an environmental receptor, including an adverse effect on the integrity of a European site. The EA, via the EP application and determination process, will conclude whether the use of SCR constitutes BAT in respect of the Proposed Development [REP9-009] and [REP6-013].
- 6.5.56. Therefore, the EP application and the Recommended DCO allow for the Proposed Development to operate either with or without abatement in the form of SCR. Accordingly, the impacts associated with either outcome, to be determined by the EA, have been assessed within the Applicant's ES and the HRA [REP6-013] and [REP7-015].
- 6.5.57. In respect of air quality and the proposed mitigation measures, NE confirmed in their signed SoCG [REP1-004] that the following has been agreed:
- *"With the implementation of either one of the avoidance and mitigation measures as set out generally in section 3.2, and specifically between paragraphs 6.3.24 and 6.3.26 of the HRA Report (Examination Library Reference APP-134) (being combustion control or use of SCR with an annualised ammonia budget), which are included as part of the Proposed Development, and which will be assessed further (in terms of likely emissions) via the Environmental Permitting process for the Proposed Scheme under The Environmental Permitting (England and Wales) Regulations 2016, there would be no adverse effects on the integrity of any European Site resulting from air quality impacts, as set out in Section 6.3 of the HRA Report (Examination Library Reference APP-134)"*
- 6.5.58. The ExA noted that paragraphs 6.3.24 to 6.3.26 of the HRA report [APP-134] do not contain the information on the specific proposed mitigation measures and believes the SoCG is intending to refer to paragraphs 6.3.20 to 6.3.22. These paragraphs are now located at paragraphs 6.3.29 to 6.3.31 in the HRA report submitted at D6 [REP6-006].

## **Conclusion**

- 6.5.59. We are satisfied that the Applicant has appropriately considered potential air quality effects on the relevant European sites and their qualifying features. We are also satisfied that the Applicant has considered the relevant projects/plans for an in-combination assessment. No IPs raised concerns during the Examination with regards to the European sites and qualifying features considered by the Applicant, nor were any concerns raised with regards to the in-combination projects. The Applicant provided the conservation objectives for the European sites in the HRA report [REP6-006] and we have considered these in reaching our conclusions.

- 6.5.60. The ExA is satisfied that the Proposed Development, taken alone, would not result in adverse effects on the integrity of any European site. This is taken on the basis that all European sites with the exception of the River Derwent SAC would experience an increased emission level below the 1% level of change, which constitutes a measure for insignificant effects. In respect to the River Derwent SAC, where 1.1% potential increased ammonia change is predicted, this is deemed to be analogous with 1% due to the conservancy built into the air quality modelling and the overall critical load would not be exceeded at this site.
- 6.5.61. The ExA acknowledges that the Proposed Development, taken in-combination with other projects, are predicted to exceed the 1% of the critical load/level at the Lower Derwent SAC, SPA and Ramsar (in respect of ammonia and nitrogen deposition with Scenario D); however, this does not result in overall exceedance of the critical load for this site. Predicted exceedances of 1% of the critical load/level are also identified for Skipwith Common SAC (for ammonia, nitrogen deposition and acid deposition with Scenario D), and Thorne Moore SAC and Thorne and Hatfield Moor SPA (for ammonia with Scenario D; and for nitrogen and acid deposition with Scenarios C and D). It is noted that exceedances of the critical loads/levels overall are already occurring at these European sites.
- 6.5.62. The ExA has considered the supporting information provided by the Applicant in respect of these sites and in light of the conservation objectives. We acknowledge the conservancy built into the air quality model and are satisfied that the Applicant has demonstrated that the PC of the Proposed Development alone and in-combination (the latter based on a conservative estimate) would fall well below the point at which the NE research report suggests one might observe a potentially adverse effect on the qualifying habitats at these sites (i.e. a 'measurable change'). However, the exceedances over the 1% measurement of insignificance are worst-case scenarios assuming SCR would be used, and the ExA acknowledges that such predications are inherently uncertain, and that conservatism is built into the air quality modelling.
- 6.5.63. No evidence was submitted into the Examination by any IPs to suggest that the Proposed Development, either alone or in-combination with other projects would lead to an adverse effect on the European sites considered. Indeed, NE [RR-212] confirmed that they believe the Applicant has submitted a thorough ES which NE are satisfied demonstrates beyond reasonable scientific doubt that there would be no significant effect on the integrity of any European sites. While NE did not respond to the RIES, and their signed SoCG [REP1-004] was issued early in the Examination, there is nothing that leads the ExA to believe that NE's position in respect to European sites and the Proposed Development has changed. The non-material change to the stack height parameters have resulted in a marginal betterment in respect of air quality but this is considered to result in no overall change to the assessment of effects.

- 6.5.64. It is agreed in the SoCG between the Applicant and NE [REP1-004] that no further direct mitigation of air emissions is necessary beyond setting an appropriate stack height and either:
- Including NOx emissions control by combustion control; or
  - including NOx and ammonia emissions control by the use of SCR with an annualised ammonia emissions budget.
- 6.5.65. We are satisfied that Schedule 13 of the Recommended DCO secures the height of the stacks. This specifies a maximum height for the stacks of 123m AGL/129m AOD (see Table 13 for Unit X and Table 15 for Unit Y) and a minimum height of 122.5m AGL/128.5m AOD (see Table 14 for Unit X and Table 16 for Unit Y).
- 6.5.66. In the SoCG signed between the Applicant and the EA [REP9-009] and also with NE [REP1-004], it is agreed that operational emissions from the Proposed Development would be further controlled through the EP regime that is administered by the EA. The SoCG signed between the Applicant and the EA [REP9-009] confirms that the EA would only approve an EP if it did not adversely affect a European site.
- 6.5.67. The ExA is satisfied that adequate mitigation is secured in the Recommended DCO.

### **Habitat Disturbance and Hydrological Changes to Functionally Linked Land - Otters and Fish**

- 6.5.68. Otters and fish (specifically river lamprey, sea lamprey and bullhead) were identified as qualifying features of the European sites listed below that have the potential to be impacted by the Proposed Development as a result of habitat disturbance (light/ noise/ vibration/ visual) whilst they are using functionally linked habitat. They were also considered for effects associated with potential hydrological changes (quality/ flow) to the European sites and functionally linked habitats [REP6-006]. Whilst the Proposed Development is not within or adjacent to any European sites, the River Ouse is located in close proximity to the site boundary and this is hydrologically linked to the Lower Derwent Valley SAC and River Derwent SAC (upstream) and the Humber Estuary SAC and Ramsar (downstream).
- 6.5.69. The European sites and the qualifying features considered for potential adverse effects on integrity were as follows:
- Lower Derwent Valley SAC: otter;
  - River Derwent SAC: otter, sea lamprey, river lamprey and bullhead;
  - Humber Estuary SAC: sea lamprey and river lamprey; and
  - Humber Estuary Ramsar: sea lamprey and river lamprey.
- 6.5.70. The HRA report [REP6-006] identified that the otter qualifying features of the Lower Derwent Valley SAC and River Derwent SAC may utilise habitats within and adjacent to the Proposed Development and therefore may be impacted by disturbance. The River Derwent SAC is located c.600m at its closest point from the Proposed Development; the Lower

Derwent Valley SAC is located c.4.5km. Surveys for the Proposed Development identified suitable areas for commuting, foraging and lying up/resting habitat for otter within the site boundary and surrounding 250m, although no confirmed lying up/ resting sites were identified within the Proposed Development or within 50m of it during the field surveys [REP6-006] and [APP-115]. It was considered very unlikely a maternal otter holt would be present within 250m of the Power Station Site but considered possible that a maternal holt could occur along the River Ouse within 250m of the pipeline route.

- 6.5.71. Sea lamprey and river lamprey are qualifying features of the River Derwent SAC, Humber Estuary SAC and Humber Estuary Ramsar. Bullhead were also identified as a qualifying feature of the River Derwent SAC. As noted above, the River Derwent SAC is located approximately 600m from the Proposed Development; the Humber Estuary SAC and Ramsar is located approximately 6km. Although bullhead were carried forward to Stage 2 in the HRA report, the report also states that likely significant effects are considered unlikely for bullhead, as this species is unlikely to be present within the tidal waters of the River Ouse downstream and immediately upstream of the Proposed Development. This is because bullhead is a freshwater species that does not inhabit tidal waters. Bullhead are therefore not considered further in this section.
- 6.5.72. The HRA report [REP6-006] identified that sea lamprey and river lamprey species are sensitive to water quality changes and may also be impacted by disturbance (in particular noise and vibration impacts during spawning). Due to their migratory nature, it was considered that these species may use the River Ouse (approximately 85m to the closest area of construction) and potentially may also be present within connecting watercourses and ditches in closer proximity to the Proposed Development. However, it was also considered spawning was not likely on the basis of current survey information and likely saline habitat conditions (as they spawn in freshwater habitat) and that it was unlikely that these species regularly utilise the minor watercourses and ditches crossed by the pipeline element of the Proposed Development due to the low water volume and small sizes of these watercourses. These fish species were therefore considered for potential impacts associated with changes to water quality/ flow potentially arising from both the construction and operation of the Proposed Development.
- 6.5.73. The HRA report [REP6-006] identified a potential for indirect impacts to otters, sea lamprey and river lamprey using functionally linked habitat during construction and operation as a result of pollution to watercourse. In addition, it was considered that there is potential for disturbance to otters present as a result of light, visual, noise and vibration. During construction, a risk of mortality to otters was identified as a result of collision with moving construction vehicles or interaction with construction materials and compounds and excavations. The HRA report considered that such impacts may result in the killing or injury of otters, the reduction and degradation of available otter and fish habitat and food sources and/or displacement of otters from areas used for commuting, foraging, resting and breeding.

6.5.74. The HRA report [REP6-006] states that:

- *“as a result of the expected use of trenchless techniques across all waterbodies and the c. 85 m distance from the closest area of construction to the River Ouse, it was not considered likely that there would be any impact as a result of disturbance to fish. Even in the event that trenchless techniques are not used for installation of the Gas Pipeline, the distance from the River Ouse means that noise and vibration impact on the watercourse would be negligible. Furthermore, spawning (the life stage most sensitive to disturbance) in proximity to the Proposed Scheme is unlikely due to the lack of suitable habitat and saline influences of the River Ouse in the area.”*

6.5.75. Avoidance and mitigation measures are proposed by the Applicant. These measures are listed between paragraphs 5.3.16 and 5.3.20 of the HRA report [REP6-008]. Measures are to be delivered through the LBS (secured by Requirement 8 of the Recommended DCO), which is to be prepared substantially in accordance with the final version Outline LBS submitted at D9 [REP9-008]. These measures are listed at paragraph 5.3.16 of the HRA report. In addition, the CEMP (secured by Requirement 17 of the Recommended DCO) which is to be prepared substantially in accordance with the final version Outline CEMP submitted at D8 [REP8-006], identifies the measures to be implemented to avoid/minimise generation of excessive litter, dust noise and vibration, pollution control and avoidance of hydrological impacts during construction. The CEMP will also provide detailed method statements, monitoring and management of the measures, and includes for a Pollution Incident Response Plan. Other measures also secured through the Recommended DCO include:

- Implementation of a DEMP during decommissioning, in accordance with Requirement 26 of the Recommended DCO;
- the use, where practicable, of trenchless construction techniques for installation of the gas pipeline between the NGRF and the AGI when crossing watercourses, as secured by the CEMP through Requirement 17 of the Recommended DCO, and including measures to address the use of trenched construction techniques if required;
- targeted mitigation measures to avoid or minimise disturbance of otters that may form part of the River Derwent SAC or Lower Derwent Valley SAC populations to be delivered through the LBS and CEMP secured by Requirements 8 and 17 (respectively) of the Recommended DCO;
- pollution control measures that would be incorporated into the Surface Water Drainage Strategy for the operational Proposed Development, the delivery of which is secured by Requirement 13 and 17 (CEMP) of the Recommended DCO; and
- an ecologically sensitive lighting design for the Proposed Development, the delivery of which is secured by Requirement 10 (External lighting during construction and operation) of the Recommended DCO.

6.5.76. The HRA report [REP6-008] concludes that there would be no adverse effects on the integrity of the River Derwent SAC, Lower Derwent Valley SAC, Humber Estuary SAC and Humber Estuary Ramsar as a result of

impacts on functionally linked habitat potentially used by otters and fish species.

- 6.5.77. During the Examination, we raised a concern in WQ BHR 1.2 [PD-006] with respect to the proposed avoidance and mitigation measures and their delivery, as there appeared to be a lack of commitment and detail in the outline management plans submitted with the Application. We requested that the Applicant expand on the potential impacts to protected species (including otter) should trenchless crossings of relevant watercourses not be possible and to provide further details regarding mitigation measures to be employed. In its response at D2 [REP2-035], the Applicant confirmed that measures would be imposed to minimise impacts on affected species if trenchless techniques could not be used. Various mitigation measures to minimise adverse impacts on affected species are set out in ES Chapter 9 [APP-077] and paragraphs 4.1.9 to 4.1.17 of the Applicant's Responses to the ExA's WQs [REP2-035].
- 6.5.78. In its response [REP2-045] to the ExA's WQs [PD-006], NE confirmed that it was satisfied that should trenchless techniques not be used, appropriate mitigation measures could be imposed to mitigate any impacts on otter, as detailed in Sections 9.8.23 and 9.8.31 of ES Chapter 9 [APP-077].
- 6.5.79. In WQ BHR 1.19 [PD-006], we also requested the Applicant to explain why the avoidance and mitigation measures as set out in paragraph 5.3.16 of the HRA report [APP-134] were not included in full within the Outline LBS submitted with the application [APP-135]. The Applicant was asked to confirm that measures to control effects on fish species form part of the Outline CEMP [APP-133], or if not, to provide further detail.
- 6.5.80. At D2, the Applicant made additions to the Outline LBS [REP2-026] in respect of otter and fish mitigation following our questioning. However, we noted that additions made to the updated Outline CEMP [REP4-005] appeared to be minimal in respect of otters and fish species and did not contain the same certainty as those included in the HRA Report [REP3-017] and Outline LBS [REP2-026]. We therefore asked in FWQ BHR 2.4 [PD-014] for a response.
- 6.5.81. An updated version of the Outline CEMP [REP6-005] was provided as part of the Applicant's D6 submission response to FWQ BHR 2.4 [PD-006], with revisions to the wording to match that used in the Outline LBS of D6 [REP6-009] and the HRA report [REP6-006], making it clear that the necessary mitigation measures would be carried out under the CEMP and are not optional activities. This information is included in the final version of the Outline CEMP submitted at D8 [REP8-006] and the Outline LBS submitted at D9 [REP9-009].
- 6.5.82. The CEMP is secured by Requirement 17 of the Recommended DCO and must be substantially in accordance with the Outline CEMP. Requirement 8 of the Recommended DCO secures written strategies for the landscape and biodiversity mitigation which are to be substantially in accordance with the Outline LBS and Chapter 9 (biodiversity) of the ES. The surface

water drainage strategy is secured by Requirement 13 of the Recommended DCO and the lighting strategy is secured by Requirement 10.

6.5.83. NE confirmed at D6 [REP6-023] that they are:

- *“satisfied with the approach to otter and fish mitigation across the Outline CEMP, Outline LBS and HRA and is broadly satisfied with the revisions made to the Outline CEMP in this regard. Our only minor comment is to be clear with regards to paragraph 3.4.6 that pre-construction surveys must be carried out before site clearance is undertaken unless there are sound ecological reasons why they are not necessary. We therefore recommend removing the word “ideally” from the last sentence of the paragraph.”*

6.5.84. The Applicant’s final version of the Outline CEMP [REP8-006] omits “ideally” from paragraph 3.4.6.

### **In-Combination Effects**

6.5.85. Paragraphs 5.3.21 and 5.3.22 of the updated HRA report submitted at D3 [REP3-017] state that there may be some insignificant residual effects on the otter feature of the European sites. In the ExA’s FWQ BHR 2.5 [PD-014], the Applicant was asked to confirm how the SoS could be confident that these effects would not interact with the effects of other plans or projects to lead to significant in-combination effects. The Applicant was also asked to comment on whether any insignificant residual effects on the fish features were anticipated.

6.5.86. In its response [REP6-013], the Applicant confirmed that it does not consider that any minor disturbance effects on the local otter population could combine appreciably with those of other plans or projects. Likewise, the Applicant concludes that any residual effects on fish qualifying interests would be so minimal as to be imperceptible (as set out in ES Chapter 9 [APP-077]).

6.5.87. The Applicant therefore considers [REP6-013] that the impacts of the Proposed Development on otter and fish populations could not combine appreciably with those of other plans or projects and as such, there is no prospect of significant in-combination effects.

### **Conclusion: Habitat Disturbance and Hydrological Changes**

6.5.88. NE confirmed at D6 [REP6-023] that they are satisfied with the Applicant’s approach to otter and fish mitigation across the Outline CEMP, Outline LBS and HRA and is broadly satisfied with the revisions made to the Outline CEMP in this regard.

6.5.89. NE also confirmed in their SoCG that they agree

- *“with the implementation of avoidance and mitigation measures as set out in section 3.2, and sections 5.3.16 to 5.3.21 of the HRA Report (Examination Library Reference APP134), between paragraphs 4.4.1 to 4.4.5 of the Construction Environment*



*Management Plan (CEMP) (Examination Library Reference APP-133) (the surface water drainage scheme is to be secured by Requirements 13 and the CEMP by Requirement 16 (now Requirement 17 in the current dDCO [REP7-003]) in the draft DCO (Examination Library Reference AS-012)), and the outline Landscape and Biodiversity Strategy (secured by Requirement 8 of the draft DCO), there would be no adverse effects on the integrity of any European Site resulting from likely significant effects (disturbance and hydrological impacts) on functionally linked habitats, as set out in Section 5.3.23 of the HRA Report (Examination Library Reference APP-134)."*

- 6.5.90. We are content that there would be no adverse effect on the integrity of the European sites or their qualifying features as a result of hydrological impacts and impacts to functionally linked land from the Proposed Development alone or in combination with other plans and projects. Adequate mitigation is secured in the Recommended DCO.

## **6.6. CONCLUSION**

- 6.6.1. The ExA has carefully considered all the information presented before and during the Examination, including the Applicant's ES and HRA, the RIES, and the subsequent representations on it made by IPs. We posed WQs [PD-006] and FWQs [PD-014] on matters where further explanation and clarification was required from IPs. We have taken into account the responses received, as well as the information contained within the signed SoCGs between the Applicant and NE [REP1-004] and the Applicant and the EA [REP9-009].
- 6.6.2. Having considered that information and taking into account the advice from NE and the mitigation secured through the Recommended DCO, the ExA is satisfied that the Proposed Development would not lead to an adverse effect on the integrity of any European sites, either alone or in combination. We are satisfied that the information contained in the HRA report and integrity matrices, alongside submissions in the Examination as discussed above, are sufficient for the SoS to undertake an appropriate assessment of the effects of the Proposed Development on European sites. Our assessment in this Chapter and the information contained within the RIES will assist the SoS in this task.

## **7. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT**

### **7.1. INTRODUCTION**

- 7.1.1. This Chapter provides an evaluation of the planning merits of the Proposed Development for Units X and Y. It does so in the light of the legal and policy context set out in Chapter 3 and individual applicable legal and policy requirements identified in Chapters 5 and 6 above. It applies relevant law and policy to the Application in the context of the matrix of facts and issues set out in Chapter 5. Whilst the HRA has been documented separately in Chapter 6, relevant facts and issues set out in that Chapter are taken fully into account.
- 7.1.2. For avoidance of doubt, this Chapter provides the conclusion on the case for Development Consent for Units X and Y. The Unit X only option is assessed fully in the following chapter of this Report.
- 7.1.3. The ExA has taken into account all RRs, WRs and responses to WQs and FWQs.
- 7.1.4. We have not based our examination or conclusions on the amendments contained within the Climate Change Act 2008 (2050 Target Amendment) Order 2019, which as discussed in Chapter 3 of our Report has replaced the original 80% target with 100%. This is because the Order was made after the close of the Examination and indeed one week prior to the submission of our report to the SoS. The SoS will need to consider the effects of this amendment in reaching their decision.

### **7.2. SUMMARY OF THE PLANNING ISSUES AND COMPLIANCE WITH NATIONAL POLICY**

#### **The Need for the Proposed Development**

- 7.2.1. As discussed in Chapter 5, the ExA is cognisant that the energy suite of NPSs contain a presumption in favour of granting consent for applications for energy NSIPs in general. Equally, NPS EN-1 promotes a diverse mix of types of energy infrastructure (including some fossil fuel generating capacity, renewables and nuclear) to enable the UK to transition to a low-carbon economy.
- 7.2.2. The ExA concludes that NPS EN-1 differentiates 'need for infrastructure' from 'need for the Proposed Development'. While the principle of need for energy NSIPs in general is not for debate, the ExA concludes that it is entirely correct that the SoS assesses the need for the Proposed Development because of the evidence presented to this Examination. Crucially, this approach is required to take account of the changes in energy generation, in particular the additional consented gas capacity and increasing dependence on low carbon sources, since the publication of NPS EN-1.

- 7.2.3. The ExA considers that the NPSs provide the policy framework to assess the need for the Proposed Development; need can be assessed on the basis of the individual contribution of the Proposed Development to meeting the overarching policy objectives of security of supply, affordability and decarbonisation. In doing so, we must acknowledge the new gas capacity consented since NPS EN-1 was designated. As such current models and projections regarding energy generation submitted in to the Examination must be taken into account.
- 7.2.4. The UK's consented gas generation capacity has already surpassed BEIS 2017 UEP projections, and this shows that the level of need and urgency for new fossil fuel generating capacity at the present time is less than it was at the time of publication of the energy suite of NPSs, because a lot of capacity has been consented and commissioned. As such, the ExA concludes that the individual contribution of the Proposed Development against the policy objective for security of energy supply is limited to system inertia and flexibility to support renewable energy generation. The ExA considers that this has a neutral effect and cannot be afforded considerable weight in demonstrating the individual contribution of the Proposed Development to meeting identified need.
- 7.2.5. The Applicant has not adequately demonstrated that the Proposed Development would deliver any more affordable energy for consumers than any new energy NSIP ordinarily would. Additionally, it is established that renewable energy would be a cheaper energy source than the Proposed Development. Therefore, the ExA concludes that the individual contribution of the Proposed Development to meeting the policy objective of affordability is neutral. While the Applicant has demonstrated that the Proposed Development will deliver affordable energy, the ExA concludes that this cannot be afforded considerable weight in demonstrating the individual contribution of the Proposed Development to meeting identified need.
- 7.2.6. Because of this, there is a significant risk of high carbon lock-in, which goes against the on-going and rapid transition to low carbon energy generation as advocated by NPS EN-1. Therefore, the individual contribution of the Proposed Development to meeting the policy objective of decarbonisation has not been met and carries negative weight to meeting identified need.
- 7.2.7. The ExA concludes that the energy suite of NPSs still stands strongly for the proposition that there is a need for additional energy infrastructure in general. However, in circumstances where decarbonisation is a key policy objective and Government commitment, where a substantial body of new fossil fuel generating capacity has been consented and developed since the NPS EN suite policy was designated, and where the Proposed Development would add a substantial volume of further fossil fuel generation capacity until 2050, the ExA concludes that the Applicant has not demonstrated that the Proposed Development on balance meets an identified need for gas generation capacity when assessed against the Energy NPSs overarching policy objectives of security of supply,

affordability and decarbonisation. The overall effect in the planning balance is negative.

### **Climate Change Impacts**

- 7.2.8. The ExA considers that the opposing views presented by the Applicant and IPs regarding the emissions baseline present two ends of a spectrum, and a reasonable baseline is likely to be somewhere in between. Consequently, we believe that the percentage increase in total GHG emissions from the Proposed Development could be higher than +90% as reported in the ES.
- 7.2.9. The ExA concludes, that because the Proposed Development makes little individual contribution to meeting the identified need for some fossil fuel capacity, the assessment of GHG emissions should be based on its total emissions rather than on a comparison of emissions intensity.
- 7.2.10. There was no dispute by any party including the Applicant [APP-083] that a total increase in GHG emissions of +90% is a significantly adverse effect of the Proposed Development. As such, the ExA concludes the Proposed Development will not accord with the relevant NPSs, and would undermine the Government's commitment, as set out in the CCA2008, to cut GHG emissions.
- 7.2.11. The ExA considers that total GHG emissions are likely to be higher than that set out in the ES [APP-083] (as we have already stated above). It follows that the impact of the Proposed Development on climate is a greater severity of significant adverse effects. The ExA has accordingly given it greater weight in decision making and in the Planning Balance. The effect in the planning balance is negative.

### **Carbon Capture Storage Readiness**

- 7.2.12. The Proposed Development would meet NPS EN-2 requirements to be CCR ready. Requirements 22 and 23 (CHP delivery and monitoring) would ensure CCR is provided and both are secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Combined Heat and Power Readiness**

- 7.2.13. The Proposed Development would meet NPS EN-2 requirements to be CHP ready. Requirement 28 (CHP) would ensure CHP viability is reviewed and delivered and it is adequately secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Traffic and Transport**

- 7.2.14. The ExA is satisfied that the scope and assessment of the ES [APP-073] is robust, and that the disruption and traffic increases to the local area during the construction phase of the Proposed Development would be temporary and restricted to a short-term period. The Proposed Development would meet the requirements of NPS EN-1. We are satisfied that Requirements 11 (highways access), 18 (CTMP), 19 (CWTP) and 27 (decommissioning) would ensure mitigation identified in the ES [APP-

073] is adequately carried out, and these are secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Air Quality**

- 7.2.15. We are satisfied that there would be no significant negative effects caused from construction and operation stages of the Proposed Development on air quality matters. Emissions from the Proposed Development will be controlled by the EP regime. We are satisfied that the Proposed Development would accord with the relevant NPSs. We are satisfied that Requirements 5 (detailed design), 17 (CEMP), 26 and 27 (decommissioning plans) would ensure mitigation identified in the ES [APP-074] is adequately carried out, and these are secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Noise and Vibration**

- 7.2.16. The ExA is satisfied that there would be no significant negative effects from the construction and operation stages of the Proposed Development, and that it would accord with the relevant NPSs. We are satisfied that Requirements 17 (CEMP), 21 (operational noise) and 26 (decommissioning environment plan) would ensure mitigation identified in the ES [APP-075] is adequately carried out, and these are secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Historic Environment**

- 7.2.17. We are satisfied that there would be no significant negative effects from the construction and operation of the Proposed Development, and the subsequent presence of additional and significant sized infrastructure, on the historic environment. We are satisfied that the Proposed Development would accord with the relevant NPSs. The provision of interpretative panels and suitable locations about the setting of the heritage assets is suitable mitigation. We are satisfied that Requirement 16 (archaeology) would ensure an appropriate way in which to investigate and record archaeological remains should they be discovered during the construction particularly of Work No 7 (gas pipeline) and Work No 6 (AGI). This is secured in the Recommended DCO.
- 7.2.18. The ExA considers that the Applicant, SDC and NYCC could have engaged further to ensure that the design development process, and the proposed layout and composition took greater account of the visual and functional significance of the original Power Station Site. This is because all parties had acknowledged the value of Drax as one of the last remaining coal fired power stations constructed in the 1970s in England [REP2-035]. However, in circumstances where the original power station has no formal historic built environment designation, the ExA has accorded the existing structure a lower significance than that accorded to a formally designated asset. Accordingly, the ExA is satisfied that design satisfies the technical and operational efficiency of the Proposed Development, and in that regard meets the policy requirement. The effect in the planning balance is neutral.

## **Biodiversity**

- 7.2.19. The ExA is satisfied that there would be no significant negative effects from the construction and operation stages of the Proposed Development on local wildlife and their habitats, and that it would accord with the relevant NPSs. We are satisfied that the Biodiversity Net Gain Assessment report [REP9-007] demonstrates that the Proposed Development would improve the habitats in the vicinity over a period of time. This is a benefit of the scheme.
- 7.2.20. We are satisfied that Requirements 8 (LBS) and 17 (CEMP) would ensure mitigation identified in the ES [APP-077] is adequately carried out, and these are secured in the Recommended DCO. The effect in the planning balance is positive.

## **Landscape and Visual Amenity**

- 7.2.21. The ExA agrees with the LVIA in the ES [APP-078] that significant effects are predicted on landscape character, local landscape designations and visual amenity as a result of the Proposed Development. While the Outline LBS [REP9-008] sets out mitigation for some landscape effects, inevitably many of the significant adverse effects of the Proposed Development on the surrounding landscape would remain. Requirement 8 (LBS) would ensure mitigation identified in the ES [APP-078] is adequately carried out, and this is secured in the Recommended DCO. The ExA accepts that the adverse landscape and visual effects of the Proposed Development cannot be avoided entirely, and as such the Outline LBS mitigates the landscape and visual effects of the scheme as far as reasonably practicable. In that regard the ExA concludes that the Proposed Development will comply with the policies in NPS EN-1 and EN-2.
- 7.2.22. The ExA is not convinced that the partnership proposal and mitigation strategy in the revised OSMS [REP8-015] has been adequately justified on grounds of the NPSs or Paragraph 56 of the Framework. NYCC is seeking a community fund in order to undertake long-term landscape mitigation. This is consistent with its policies, and indeed no IPs raised any concern with this approach in principle. However, the ExA does not consider that sufficient evidence has been advanced to justify that the contributions sought for the final eight mitigation projects were specific to the Proposed Development. Nor did the ExA see sufficient evidence that the Proposed Development is proven to be the direct cause of the deterioration of the landscape character in general which the OSMS seeks to repair. Ultimately, NYCC were unable to demonstrate to the ExA on the several opportunities put to them, that their approach fundamentally met the tests in Paragraph 56 of the Framework.
- 7.2.23. The ExA understands the position set out by NYCC supported by SDC and YWT and feels that the Applicant could have adopted a more significant stewardship role given the visual, functional, and indeed historical prominence of the existing power station and the Proposed Development in the local and regional area. The ExA concludes that while the Applicant's LBS [REP9-008] sets out only the minimum required

mitigation and enhancement for a development of the given scale and significance, it does in fact satisfy all policy requirements. Overall, we consider this to be a net negative assessment, but it carries only minimal weight in the planning balance because of the statements contained within the NPSs.

### **Flooding and Water**

- 7.2.24. The ExA is satisfied that there would be no significant adverse effects from the construction and operational stages of the Proposed Development on hydrology, groundwater or flooding and flood defences, and that it would accord with the relevant NPSs. We are satisfied that Requirements 7 (LBS), 13 (surface water drainage), 14 (flood risk) 17 (CEMP) and 26 (decommissioning) would ensure mitigation identified in the ES [APP-080] is adequately carried out, and these are secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Waste Management**

- 7.2.25. We are satisfied that the Proposed Development would have no significant adverse effects on waste from construction, operation and decommissioning activities, and that the Proposed Development would accord with the relevant NPSs. Requirement 17 (CEMP), which includes a SWMP, would ensure mitigation identified in the ES [APP-081] is adequately carried out, and this is secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Ground Conditions and Contamination**

- 7.2.26. We are satisfied that the Proposed Development would have no significant negative effects on land contamination and ground conditions from construction, operation and decommissioning activities, and that the Proposed Development would accord with the relevant NPSs. Requirements 15 (ground conditions), 17 (CEMP) and 26 (decommissioning) would ensure mitigation identified in the ES [APP-079] is adequately carried out, and this is secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Socio-Economics**

- 7.2.27. We find that the Proposed Development would have positive effects on socio-economic matters through the creation of local construction jobs. This is a considerable benefit of the Proposed Development. We are satisfied that the Proposed Development would have no long-term negative effects on the PRoWs or on agricultural practices.
- 7.2.28. Requirements 9 (PRoW management plan), 15 (ground conditions) and 17 (CEMP), which includes a SWMP, would ensure mitigation identified in the ES [APP-082] is adequately carried out, and this is secured in the Recommended DCO. A signed Legal Agreement between the Applicant and NYCC and SDC submitted at the close of the Examination [AS-140] would ensure the local employment scheme would be carried out and adhered to, and this is the most appropriate means to secure this. The effect in the planning balance is positive.

### **Major Accident and Disaster Prevention**

- 7.2.29. We are satisfied that the Proposed Development would have no significant adverse effects on risk of major accidents or disasters from construction, operation and decommissioning activities, and that the Proposed Development would accord with the relevant NPSs. The effect in the planning balance is neutral.

### **Statutory Nuisance and Human Health**

- 7.2.30. The ExA is satisfied that the Proposed Development would have no significant adverse effects in respect to statutory nuisance and human health and would accord with all legislation and policy requirements in the NPSs. Requirements 8 (LBS), 10 (external lighting), 17 (CEMP), 20 (construction hours) would ensure nuisances and effects on amenity of local people would be minimised, and these are secured in the Recommended DCO. The effect in the planning balance is neutral.

### **Alternatives**

- 7.2.31. The ExA is satisfied that consideration of alternatives have been rigorously tested and have been adequately addressed in the ES [APP-072] and that it meets the requirements of NPS EN-1 and the EIA Regulations. The reuse of the existing power station is a benefit of the Proposed Development which weighs in its favour. The effect in the planning balance is positive.

### **Cumulative and Combined Effects**

- 7.2.32. We are satisfied that the Proposed Development would have no significant cumulative or combined effects from construction, operation and decommissioning activities. All Requirements in the Recommended DCO would ensure mitigation identified in the ES [APP-069] to [APP-067] is carried out. The effect in the planning balance is neutral.

### **HRA**

- 7.2.33. We are satisfied that the Proposed Development would not result in an adverse effect on the integrity of any European site, either alone or in combination with other plans or projects. We find that sufficient information has been advanced by the Applicant so as to inform an appropriate assessment under the Habitat Regulations, should the SoS feel the need to do so. The effect in the planning balance is neutral.

## **7.3. ASSESSMENT AGAINST S104 OF THE PA2008**

### **Preliminary Comments**

- 7.3.1. In examining this Application, the ExA has been mindful of the legal framework within which the SoS must make a decision and has sought to explore and seek representations on the operation of s104 of the PA2008 and the planning balance. The ExA is grateful to IPs notably the Applicant and CE for their detailed submissions on the operation of s104 set out at D2 [REP2-002], [REP4-012], [REP4-017], [REP5-021] and [REP6-021] and for the Applicant drawing to the ExA's attention the Court of Appeal



decision in the Thames Tideway Tunnel NSIP case [REP5-021]. The ExA has considered these WRs carefully.

- 7.3.2. We agree with the Applicant that s104(7) of the PA2008 does not dis-apply NPS EN-1. NPS policies have guided us in deciding what weight to give to planning issues. However, the ExA does not agree with the Applicant that substantial weight should be given to the Proposed Development's contribution to satisfying need. This is because, as discussed in Chapter 5, given the substantial volume of consented and constructed capacity, the ExA considers that only limited weight can be applied to what is, in effect, a negligible contribution.
- 7.3.3. As discussed below, the ExA's recommendation to withhold consent turns on the application of s104(7) and on the ExA's conclusion that the Proposed Development does not accord with the central policy objectives in the NPS. However, no definitive judicial authority was put forward in the Examination which guides decision makers on the effect of and interplay between s104(2)(a) (the SoS's duty to have regard to the NPS) and section 104(3) (the SoS's duty to decide in accordance with the NPS) in circumstances where a development might be in general accordance with the relevant NPS yet fail to accord with its central policy objectives. If adopting the ExA's recommendation to withhold consent it will ultimately of course be for the SoS to be satisfied that this is within the powers of the PA2008.

#### **S104(2), (3), (5) (6) and (8)**

- 7.3.4. S104(2) and s104(3) of the PA2008 requires the SoS to have regard to, and to decide the Application in accordance with any national policy statement, except to the extent that one or more of subsections (4) to (8) apply.
- 7.3.5. The ExA concludes that the energy suite of NPSs still stands strongly for the proposition that there is a need for additional energy infrastructure in general. However, in circumstances where decarbonisation is a key policy objective and Government commitment, where a substantial body of new fossil fuel generating capacity has been consented and developed since the energy suite of NPSs was designated, and where the Proposed Development would add a substantial volume of further fossil fuel generation capacity until 2050, the ExA concludes that the Applicant has not demonstrated that the Proposed Development on balance meets an identified need for gas generation capacity when assessed against the Energy NPSs overarching policy objectives of security of supply, affordability and decarbonisation.
- 7.3.6. The ExA concludes, that a total increase in GHG emissions of +90% is a significantly adverse effect of the Proposed Development. As such, the ExA concludes the Proposed Development will not accord with the relevant NPSs, and would undermine the Government's commitment, as set out in the CCA2008, to cut GHG emissions. The ExA considers that total GHG emissions are likely to be higher than that set out in the ES [APP-083] (as we have already stated in previous Chapters of this Report). It follows that the impact of the Proposed Development on

climate is a greater severity of significant adverse effects. The ExA has accordingly given it greater weight in decision making and in the Planning Balance.

7.3.7. For these reasons, the ExA concludes that subsection (7) applies, and whether or not to grant consent for the Application turns on the balance identified in the subsection.

7.3.8. The ExA has no evidence that granting development consent for the Proposed Development would in itself lead the SoS to be in breach of duties under the CCA2008 or duties under any other enactment. The ExA concludes therefore that s104(5) does not provide an exception to the presumption in favour of granting consent.

7.3.9. No IPs raised any concerns that granting consent for the Proposed Development would be unlawful under any enactment and there is no condition prescribed under the Infrastructure Planning (Decisions) Regulations 2010 which would require the SoS to withhold consent. The ExA concludes therefore that the exceptions in s104(6) and (8) do not apply.

#### **S104(4) International Obligations**

7.3.10. We have concluded that the Proposed Development does not comply with the overarching objectives of the NPSs which are themselves in line with the broad objectives of the Paris Agreement. To that extent (although the ExA did not receive any direct evidence during the examination on this) if the SoS finds that the grant of development consent, for this specific project, would lead directly to the UK being in breach of international obligations under the Agreement, the SoS may consider that s104(4) provides an exception to the presumption in favour of granting development consent for Units X and Y.

#### **S104(7) Balance of Planning Issues**

7.3.11. The ExA concludes that the planning impacts which are positive, and thus weigh in the Proposed Development's favour are as follows:

- Biodiversity. The BNG, albeit not as ambitious as sought by YWT and NYCC and SDC, would nevertheless increase and thus amount to a betterment as opposed to a 'do-nothing' scenario;
- Socio-Economics. the Proposed Development would also result in considerable construction job creation; the majority of which would be sourced from the local economy; and
- Alternatives. The Proposed Development would also re-use an existing power station and equipment on the site; it already has its own electrical connections and the distance between the power station and the NGG Feeder line is a relatively short distance.

7.3.12. Taken together, the ExA considers significant weight should be attached to these benefits.

7.3.13. For the reasons given in Chapter 5 of this Report, the ExA concludes that the planning impacts which are neutral are matters concerned with:

- CCS readiness;
- CHP readiness;
- traffic and transport;
- air quality;
- noise and vibration;
- historic environment;
- flooding and water;
- waste management;
- ground conditions and land contamination;
- major accident and disaster prevention;
- HRA; and
- cumulative and combined effect.

7.3.14. The ExA concludes that the planning impacts which are negative, and thus weigh against the Proposed Development are as follows:

- Decarbonisation. Coal-fired stations have significantly reduced in number and gas-fired replacement capacity has exceeded BEIS forecasts by a considerable number. As a result, consenting further gas capacity against this backdrop would undermine the objectives of decarbonisation. Considerable weight is attached to this negative effect.
- Climate change. The Proposed Development would result in a significant increase in GHG emissions and would have a significantly adverse negative effect on climate change. The provision of CCS is not a practical option for the SoS to consider as a means of mitigation. Considerable weight is attached to this negative effect.
- Landscape and Visual. The Proposed Development would have a significant adverse effect on landscape character and visual receptors owing to its sheer size and scale. However, the ExA accepts that little in the way of mitigation can be undertaken; this being acknowledged in NPS EN-1, and that the Proposed Development would only readily be visible against the already significant sized infrastructure within the power station complex. This negative impact has not weighed heavily in the ExA's overall conclusions.

### **Conclusion on Balance of Planning Issues**

7.3.15. The ExA considers that the Proposed Development's failure to deliver carbon reduction objectives in accordance with the principles of NPS EN-1 and the adverse impact of the total GHG emissions generated by the Proposed Development outweigh the benefits of the Proposed Development described above. Further, as discussed in Chapter 5 of this Report the anticipated extent of the Proposed Development's actual contribution to satisfying need is minimal and the ExA has been unable to give any significant weight to need when applying the planning balance.

7.3.16. The ExA concludes therefore that the case for development consent is not made.

## **7.4. THE SECRETARY OF STATE'S DECISION**

- 7.4.1. The ExA believes that in determining the application, the following options are available to the SoS.

### **Agree with ExA's Recommendation**

- 7.4.2. The SoS could agree with our assessment and conclusion and determine that consent should be withheld.

### **Disagree with the ExA's Recommendation**

- 7.4.3. The SoS could disagree with the ExA and conclude that the Proposed Development accords with the overarching policy objectives in the NPSs, because the Proposed Development would meet an urgent need for fossil fuel generating capacity and that it contributes to decarbonisation. Thus s104(3) of the PA2008 is satisfied. In which case, the Order for the Proposed Development should be made. The ExA has prepared a Recommended DCO, which is discussed in more detail in Chapter 10 and is set out in Appendix D of this Report.

### **Partially Agree with the ExA's Recommendation**

- 7.4.4. The SoS could disagree with the ExA and could find that the Proposed Development's individual contribution to meeting identified need is satisfied such to afford significant, as opposed to our application of minimal weight in the planning balance. However, and in doing so, the SoS could accept that the Proposed Development would not contribute to decarbonisation, and/or that the adverse effect caused by the significant increase in GHG emissions generated by the Proposed Development, taken with or without any other planning matter, would be sufficient to outweigh the benefits of the scheme. In such circumstances, the option is available for the SoS to consider making an Order which authorises Unit X only and the associated development (including battery storage) (Unit X only).
- 7.4.5. The ExA has examined the acceptability of consenting Unit X only, and this is discussed further in Chapter 8 of this Report. Should the SoS determine that development consent should only be granted for Unit X only, the ExA has prepared an Alternative Recommended DCO, which is discussed in more detail in Chapter 10 and is set out in Appendix E of this Report.
- 7.4.6. The ExA has examined and dismissed the possibility of the Recommended DCO being made with CCS provision, as opposed to CCS readiness. The former was advanced by IPs as a method of avoiding refusal by ensuring that the net atmospheric carbon effect of the project was materially reduced. However, the Applicant made clear submissions that the Proposed Development was policy and lawfully compliant; and that the technological infancy of CCS taken with the unknown additional financial costs would make the development un-commercial and unviable.

- 7.4.7. For this reason, we have not recommended the SoS explore full CCS with the Applicant as an alternative to refusal. However, the ExA acknowledges that it is for the SoS to explore this option further with the Applicant during the decision period if they so wish. If the SoS was minded to consider this, consultation with the all IPs would be necessary.

## **8. ALTERNATIVE RECOMMENDED DCO FOR CONSENTING UNIT X ONLY**

### **8.1. INTRODUCTION**

8.1.1. The examination and implications of the Unit X only option has been set out in this Chapter. We do not assess this in previous Chapters in this Report firstly because it is not the Proposed Development before the SoS; and secondly the Applicant has clearly stated [REP9-016], [REP9-017], [REP9-018] and [REP9-021] that it is opposed to a Unit X only consent.

8.1.2. We undertook an assessment of a Unit X option only because the ExA wanted to give the SoS an option to consent some energy generating capacity from the site, should they partially agree with the ExA's recommendation set out in Chapter 7 of this Report.

8.1.3. The ExA is satisfied that there is sufficient information in the Applicant's submissions for the SoS to make a decision on the Unit X only option. What's more, all IPs have had an opportunity make representations on this option at D9 and the subsequent period before the close of the Examination.

### **8.2. PLANNING ISSUES FOR UNIT X ONLY**

#### **Background and Examination**

8.2.1. The ExA wanted to understand the implications of a Unit X only development from the outset of the Examination.

8.2.2. In WQs ANC 1.10 and ANC 1.11 [PD-006], the ExA asked the Applicant why it had proposed 3,600MW of new gas generation to replace 1,320MW of coal. The Applicant provided its response [REP2-035] by stating, amongst other things, that the quantum was necessary to meet the NPSs requirements. In WQ ANC 1.11 [PD-006], we asked if delivery of Unit Y was optional, given the embedded flexibility in the Application and draft DCO. The Applicant disputed that Unit Y was optional, but then stated that a decision on whether to proceed with the construction of Unit Y would be a financial one. This suggests to the ExA that delivery of Unit Y is indeed optional.

8.2.3. In WQ ANC 1.12 [PD-006], we requested the Applicant provide additional GHG emissions data, which was not included in ES Chapter 15 [APP-083], which would allow the ExA and the SoS to make direct comparisons of the total GHG emissions increases for the various scenarios that could occur, including the option that Unit X only was developed (with Unit Y not commissioned) operating alongside an existing Unit 6 coal-fired station. The Applicant responded [REP2-035] providing a number of scenarios; scenario 3 being the closest to what we were seeking, but it was not the like-for-like breakdown we had hoped to find.

- 8.2.4. The Applicant [REP2-035] has maintained its position throughout the Examination that 3,600MW generated from both units would comply with NPS EN-1 in meeting what it perceives as the already established need. The Applicant also says that since there are no binding targets or quotas for specific technologies, the quantum of energy generation does not need to be justified.
- 8.2.5. Notwithstanding, the ExA issued a Rule 17 letter [PD-018] on 15 March 2019 to further explore if the option granting consent for Unit X alone was in the mind of the SoS. For this purpose, the ExA asked the Applicant what the implications of such a decision would be, particularly with regards to the total increase in GHG emissions.
- 8.2.6. The Applicant's response [REP9-016], [REP9-017], [REP9-018] and [REP9-021] gave no technical or financial reason for objecting to a Unit X only consent. Instead, it made the following points.
- 8.2.7. The Applicant states [REP9-017] that Unit X could be consented independently as Unit Y is an entirely severable and independent project within the Recommended DCO. ES Chapter 3 [APP-071] confirms that the construction of Unit Y is an independent construction project to be commenced approximately 12-months after the completion of Unit X, Work No 5 (GRF), Work No 6 (gas pipeline) and Work No 7 (AGI).
- 8.2.8. However, the Applicant states [REP9-016] and [REP9-017] that it is strongly opposed to a decision to grant consent for Unit X only, rather than the Proposed Development. The Applicant set out the main implications of such a decision would be a failure to meet the urgent need for electricity generation as identified in NPS EN-1; and an introduction of a cap on consents for gas plants which has the effect of increasing GHG emissions.
- 8.2.9. With regard to GHG emissions, the Applicant points to its response to WQ ANC1.12 [REP2-035], and states that scenario 3 provides sufficient information to assess the GHG emissions from Unit X on its own. The Applicant adds [REP9-017] that if only Unit X was granted consent the balance between benefits and effects of the Proposed Development would remain unchanged; this means that half the electricity would be produced, half of the absolute GHG emissions from within the Proposed Development boundary would be produced, and half of the UK wide GHG emissions reduction benefit from the displacement of less efficient plant would be realised. It would also set a precedent.
- 8.2.10. CE also provided a response to our R17 letter [REP9-023]. It stated that a Unit X only consent would be preferable to consenting the full proposed capacity, as doing so would reduce the scale of the project's potential climate impact and stranded asset risk. However, CE states [REP9-023] that it is not clear that even this reduced scale is consistent with the level of anticipated need for new unabated gas generation and power sector scenarios that comply with the UK's emissions reduction commitments. The construction of Unit X alone would also result in a significant increase in generating capacity against Unit 5 and 6's total capacity.

## Further Assessment Presented by the ExA

- 8.2.11. The ExA considers that the Applicant's responses to our requests for directly comparable GHG emissions data for the varying possible scenarios [REP2-035] is somewhat disappointing; as it uses different timeframes than is used in the ES [APP-083]. We requested such directly comparable data in or R17 letter [PD-018] and again, the information was not provided.
- 8.2.12. The ExA has used data taken only from the ES [APP-083] to calculate the total and comparable GHG emissions commencing in 2023 (the year in which Unit X is scheduled to commence operating) for the 25-year life period of Unit X. We have used this time frame as it allows for directly comparable total GHG emissions between a Unit X operating alongside Unit 6, against the same scenario should the SoS consent the Proposed Development and the Applicant builds it out as it intends. It is split from 2026 to take into account that Unit 6 would operate at a lower intensity than currently. Tables 8.1, 8.2 and 8.3 below sets these out.

**Table 8.1: Baseline Emissions**

Year	Units 5 and 6 (t/CO <sub>2</sub> e)
2023-2046	138,387,000

**Table 8.2: Total GHG emissions from Unit X and Unit 6 2023-2046**

Year	Unit 6 (t/CO <sub>2</sub> e)	Unit X (t/CO <sub>2</sub> e)	Total (t/CO <sub>2</sub> e)
2023-2046	69,193,500	143,784,000	212,977,500

**Table 8.3: Total GHG emissions from Proposed Development and Unit 6 2023-2046**

Year	Unit 6 (t/CO <sub>2</sub> e)	Proposed Development (t/CO <sub>2</sub> e)	Total (t/CO <sub>2</sub> e)
2023-2026	19,416,000	23,964,000 (Unit X only)	43,380,000
2027-2046	N/A	239,640,000 (Units X and Y)	239,640,000
Total	19,416,000	263,604,000	283,020,000

- 8.2.13. The ExA must assume that Units 5 and/or 6 would continue to operate post-2025; notwithstanding that in Chapter 5 of this Report we express some doubts that it would.



## Conclusion

- 8.2.14. Having considered the principles in the Inspectorate's Advice Note 16 March 2018 entitled 'Requesting Changes' the ExA is satisfied that a Unit X only consent is not so changed that it is a materially different project, to the extent that the SoS would not be in a position to consent it. The ExA is also satisfied on matters regarding fairness because the Applicant and all IPs had an opportunity to make representations on the R17 [PD-018] which clearly set out that the ExA was considering this option for the SoS to consider and requested specific information to make relevant assessments. Additionally, the ExA does not accept the assertion that consenting Unit X alone sets a precedent of introducing a cap on gas plants. All future Applications for gas plants, such as this one, will be assessed and examined on their own merits.
- 8.2.15. Given the lack of technical or financial reasons for objecting to a Unit X only consent, the ExA considers that the SoS can be satisfied that consenting Unit X only would not endanger or jeopardise project commencement, delivery or operation. In fact, the ExA considers that the Applicant has provided overwhelming reassurance that delivering Unit X only is entirely possible on account of ES assessment [REP9-017], severability in the draft DCO [REP9-021], and construction programme [APP-071]. The Applicant has provided a draft DCO relating to Unit X only [REP9-021].
- 8.2.16. The ExA has assessed the effects of a Unit X only consent against the assessment in the ES [APP-069] to [APP-087]. It is our judgement that a Unit X only consent would have no worse or greater likely significant effects than those identified in the ES. Indeed, with a shorter construction period and less physical infrastructure, the ExA considers that a Unit X only consent would have a less-worse environmental effect against the assessment for the Proposed Development on matters relating to traffic and transport, landscape and visual amenity and air quality.
- 8.2.17. Consideration for a Unit X only consent potentially affects matters concerning climate change impacts. Here Tables 8.2 and 8.3 show that Unit X, operating alongside Unit 6, would generate considerably less total GHG emissions during the period 2023-2046 than the Proposed Development (212,977,500 t/CO<sub>2</sub>e vs. 263,604,000 t/CO<sub>2</sub>e). The site would as a result generate less energy capacity. However, at 2,000MW, Unit X and the battery storage would more than adequately replace the 1,320MW of lost energy capacity from the existing Units 5 and 6, and the SoS will be aware of the quantum of gas capacity for new generating stations which has been consented against the BEIS forecasts, which we discuss in Chapter 5 of this Report.
- 8.2.18. It is open to the SoS to find, as stated in the ES [APP-083] that Units 5 and/or 6 would, on the balance of probability, continue operating post-2025 on a 'do nothing' scenario. As we find in Section 5.3 of Chapter 5 of this Report, we have no reason to doubt the Applicant's evidence that Units 5 and 6 would be capable of operating viably at the required lower intensity rating. In such circumstances, the existing baseline in Table 8.1

(taken from ES Table 15-15 [APP-083]) represents an accurate likelihood of emissions, and the SoS will note that a Unit X only consent, assuming it replaces both Units 5 and 6, would generate only marginally more (approximately + 3.9%) total GHG emissions than the baseline scenario. In the scenario that Unit 6 were to remain operating alongside Unit X, which could occur in any event if the Applicant chooses not to implement Unit Y from the Proposed Development, the total GHG emissions would be higher but considerably lower than the total from the Proposed Development.

8.2.19. The SoS could accept the arguments advanced by CE, that the baseline emissions in the ES [APP-083] are incorrect and should be considerably lower than that stated because of Units 5 and 6 inevitable closure post-2025 and the unproven assumption that the lost capacity would be sourced and replaced by NGET with similar generating and intensity stations; the latter point is accepted by the ExA in Section 5.3 of Chapter 5. In such circumstances, the increase in GHG emissions from a Unit X only consent against a lower baseline would thus be considerable, and the SoS may equally conclude those adverse effects in granting a Unit X only consent outweigh any benefits.

8.2.20. As with the Proposed Development and for the reasons set out in Chapter 7 of this Report, the exceptions in s104(4), (5), (6) and (8) of the PA2008 do not apply and would not prevent the SoS making an Order for Unit X alone. Unless the SoS considers that the grant of development consent for Unit X alone would lead directly to the UK being in breach of international obligations under the Paris Agreement, s104(4) would similarly not apply. Therefore, it remains for the SoS to determine whether a Unit X only consent would sufficiently alter the planning balance which we set out in Chapter 7 of this Report. If the SoS is satisfied that the adverse impacts of Unit X alone do not outweigh its benefits, s104(7) does not apply. In that case, we recommend that the SoS makes the Order for the Alternative Recommended DCO which is attached at Appendix E to this Report.

### **8.3. THE SECRETARY OF STATE'S DECISION**

8.3.1. Should the SoS be minded to make the Order for Unit X only, the ExA has prepared an Alternative Recommended DCO, and this is set out in Appendix E of this Report. Matters concerning CA and TP are reported on in Chapter 9 of this Report.

8.3.2. In our Rule 17 letter issued on 15 March 2019 [PD-018], we requested that the Applicant provide a draft DCO should the SoS be minded to allow consent for Unit X only. The Applicant duly provided this without prejudice to its position on the matter [REP9-018] and [REP9-021]. This is discussed further in Chapter 10 of this Report but the Works to be deleted are as follows:

- Work No 2 – consent for Unit Y;
- Work No 3B – battery storage for Unit Y (is instead added to Work No 3A which becomes Work No 3);

- Work No 4B – GIS building for Unit Y;
- Work No 8B – electrical works in connection with Unit Y; and
- Work No 12B – decommissioning of sludge lagoons in connection with Unit Y.

## **9. COMPULSORY ACQUISITION AND RELATED MATTERS**

### **9.1. INTRODUCTION**

- 9.1.1. The Application subject to Examination includes proposals for the CA of freehold, new rights, and TP of land.
- 9.1.2. While the ExA recommends that consent for the Order should be withheld, we recognise that the SoS may disagree and conclude that the Order be made for either part of; or for all the development proposed. This Chapter therefore proceeds on the basis that the SoS decides that the planning case set out in Chapters 5 to 8 weighs in favour of the Proposed Development. It will firstly examine the CA tests for the Proposed Development in the Application as made, and will then report on implications, if any, should the SoS decide to grant consent for Unit X only and associated works only.

### **9.2. THE LEGISLATIVE REQUIREMENTS**

- 9.2.1. CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008, together with relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the DCLG CA Guidance) are met.
- 9.2.2. S122(1) of the PA2008 states that an Order granting development consent may include provision authorising the CA of land only if the SoS is satisfied that the conditions in s122 (2)(a), (b) and (c) and (3) are met. Only s122(2)(a), (b) and (3) are relevant, as no land is being exchanged.
- 9.2.3. S122(2)(a) states that the CA conditions are met if the land is required for the development to which the development consent relates. The DCLG CA Guidance states that for this to be met, the Applicant should be able to demonstrate to the satisfaction of the SoS that the land in question is needed for the development to which the consent is sought. The SoS will need to be satisfied that the land to be acquired is no more than reasonably required for the purposes of the development.
- 9.2.4. S122(2)(b) states that the condition is met if the land is required to facilitate or is incidental to that development. The DCLG CA Guidance states that an example to demonstrate compliance would be for the purposes of landscaping. The SoS would need to be satisfied in such circumstances that the land proposed to be taken is no more than reasonably necessary and CA is proportionate. No land is required permanently for landscaping. Plot 8A is specifically required to obtain new rights in connection with Work No 10C (landscaping in connection with CCR), and Plots 58, 61 and 67 to obtain new rights in connection with Work No 7A (gas pipeline) as identified on the final version of the Land Plans submitted at D5 [REP5-004].

- 9.2.5. The DCLG CA Guidance states as part of the s122 tests, that the SoS will expect it to be demonstrated that all reasonable alternatives have been explored to CA, and that there is a reasonable prospect of the requisite funds for acquisition becoming available.
- 9.2.6. S122(3) requires demonstration of a compelling case in the public interest to acquire the land compulsorily. The DCLG CA Guidance states that for this to be met, the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 9.2.7. S123 of the PA2008 relates to land to which authorisation of CA can relate. S123(1) permits CA subject to conditions that: i) a request was made for CA; ii) that all persons with an interest in the land consent to the inclusion of the provision; and iii) the prescribed procedure has been followed in relation to the land.
- 9.2.8. S127 of the PA2008 relates to Statutory Undertakers' land. S127(5) and (6) states that an order granting development consent may include provision authorising the CA of a right over Statutory Undertakers' land providing that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of Statutory Undertakers have land interests within the Order Limits.
- 9.2.9. S138 of the PA2008 relates to extinguishment of rights. S138(4) states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the Proposed Development, this section of the Act is relevant to Statutory Undertakers with land and equipment interests within the Order Limits. These matters were tested in the Examination and are reported on further below.
- 9.2.10. Further to Paragraph 2, Part 1 of Schedule 5 to PA2008, TP powers are capable of being within the scope of a DCO. PA2008 and the associated DCLG CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the Application proposal as a whole: only capable of proceeding if the primary development is justified.
- 9.2.11. The ExA has taken all relevant legislation and guidance into account in our reasoning below and relevant conclusions are drawn at the end of this Chapter.

### 9.3. THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 9.3.1. The Applicant requests consent under s123(2) of the PA2008 for land to be CA and to be TP. The Application draft DCO [APP-020] and all subsequent versions submitted by the Applicant included provisions intended to authorise CA of land and rights over land. Powers for the TP of land are also sought.
- 9.3.2. The Application was accompanied by a BoR [APP-024], SoR [APP-022], Land Plans [APP-008] and a FS [APP-023]. Taken together, these documents set out the land and rights sought by the Applicant together with the reasons for their requirement and the basis on which compensation would be funded.
- 9.3.3. As is normal, the Examination and due diligence processes led to changes to some of this documentation. Table 9.1 below sets out the updates to the documents and the principal reasons for the changes.

**Table 9.1: List of Changes to Documents**

Document	Examination Library Reference	Principal Reason(s) for Amendment
Book of Reference	[AS-005]	Minor changes to APs in respect to Plots 2, 7, 50, 53 and 54
	[OD-005]	Minor changes to APs in respect to Plots 1,2,3,4,6,7,8,9,9a,9b,10,12,13,15,18,19,25,26,27 and 28
	[REP2-017]	Deletion of Plot 1. Minor changes to IPs in respect to Plots 9a,9b and adjustment to sizes of plots.
	[REP3-011]	Address change of AP for Plot 9,9a,9b,11,12,18,25,26,27 and 28
	[REP5-013]	Insertion of Plot 8a, 26a, 27a, 28a, 29, 29a, 30,30a,31 following ExA questioning and the Applicant's diligent enquiries. Additional AP for Plots 50,53,54,55,56,57,58,60,61,62,65 and 67 following Applicant's diligent enquiries.
	[REP8-004]	Minor changes to AP in respect to Plots 2,3,4,6,7 and 8 in respect of mines and minerals.

Document	Examination Library Reference	Principal Reason(s) for Amendment
Funding Statement	[REP2-016]	Following WQ CA 1.6 [PD-006]
Land Plans	[AS-010]	Amended following Acceptance Letter [PD-001]
	[REP2-006]	Changes to CA requested by the Applicant
	[REP5-004]	Amendment to Plot 8 following ExA questioning at the CAH1 held on Thursday 6 December 2018 [EV-015]
Supplemental Statement of Reasons	[REP2-040]	Changes to CA requested by the Applicant
Statement of Reasons	[REP3-010]	Changes to CA requested by the Applicant

- 9.3.4. Notwithstanding the request for CA and TP, the Applicant has sought private agreements with the APs. At the outset of the Examination, the SoR [APP-022] indicated that no APs had signed agreements. This is discussed further below.

## 9.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

- 9.4.1. The purposes for which the CA and TP powers are required are set out in the final submitted version of the BoR [REP8-004] and final submitted version of the SoR [REP3-010], as augmented by relevant additional evidence discussed below. The powers sought are set out below.
- 9.4.2. The Applicant states in the SoR [REP3-010] that to ensure that the Proposed Development can be built, maintained and operated, and to meet the Government's policy in relation to the timely provision of new generating capacity, the Applicant requires the acquisition of a number of property interests in third party ownership, and has therefore applied for the grant of powers to facilitate acquisition and/or creation of new rights and interests, and to extinguish rights over land.
- 9.4.3. In respect of CA of land, the SoR [REP3-010] states that this power is only requested on land where other powers would not be sufficient or appropriate to enable the construction, operation or maintenance of the Proposed Development. Otherwise, new rights are required in order to construct, operate and maintain the infrastructure on land not within its ownership. The extinguishment of existing rights is required to ensure

that easements and other private rights identified as affecting the land are suspended or extinguished so as to facilitate the construction and operation of the Proposed Development without hindrance. Furthermore, there may be unknown rights, restrictions, easements or servitudes affecting the land which also need to be extinguished in order to facilitate the construction and operation of the Proposed Development.

- 9.4.4. The Applicant states [REP3-010] that underpinning the need for CA is the requirement that the Proposed Development can be constructed and be operational within a reasonable commercial timeframe, and the powers sought, and land required is no more than is required to facilitate the Proposed Development. Nevertheless, individual private agreements with each person with an interest in the land will be sought. The SoR [REP3-010] sets out the progress to these negotiations.
- 9.4.5. The Applicant states [REP3-010] that the need for CA is entirely consistent with the NPSs particularly NPS EN-1's requirement to boost energy supply in the UK.

#### **CA of Freehold of Land**

- 9.4.6. The Applicant seeks to acquire all interest, including freehold on land identified on the final submitted version of the Land Plans [REP5-004] as being shaded pink. Table 9.2 sets out the Plots required for CA.

**Table 9.2: Plots subject to CA Freehold**

<b>Plot Nos.</b>	<b>Associated Work Nos.</b>
2,4 and 6	Work No 1 (Unit X) Work No 2 (Unit Y) Work No 3 (Battery Storage) Work No 4 (GIS)
8, 10, 13 and 15	Work No 9B (Temporary Construction Laydown Area) Work No 10 (CCS readiness)
9	Work No 5 (GRF)
57 and 62	Work No 6 (AGI)

- 9.4.7. Plots 2, 4, and 6 lie within the Drax Power Station compound and are within the freehold ownership of the Applicant but with land interests from a number of other persons as identified in the BoR [REP8-004]. Plots 8, 10, 13 and 15 also lie within the freehold ownership of the Applicant but with land interests from Messers Watson and Watson. Plots 9, 57 and 62 are within private ownership.



### CA of New Rights

- 9.4.8. The Applicant seeks to acquire new rights on land identified on the Land Plans [REP5-004] as being shaded blue. These plots are identified within Schedule 8 of the Recommended DCO. The new rights are principally required for the installation, construction, operation and maintenance of principally Work No 7 (gas pipeline) and Work No 8 (electrical connections). Plot 5, which is required for the latter, lies within the Drax Power station compound and is within the freehold ownership of the Applicant but with land interests from others as identified in the final version of the BoR [REP8-004]. Other plots are in private ownership.

### CA to Extinguish Existing Rights, Easements and Servitudes

- 9.4.9. The Applicant seeks to extinguish existing rights on land identified on the Land Plans [REP5-004] as shaded green. These powers are requested to ensure easements and other private rights affecting the land are extinguished or suspended which would otherwise potentially hinder construction or operation of the Proposed Development.
- 9.4.10. This request concerns all land within the existing Drax Power Station. It concerns Plots 3 and 7 in respect to Work No 9A (temporary construction laydown area) and Work No 10A (CCS readiness) and Works Nos 10C and 11 (landscaping).

### Temporary Possession

- 9.4.11. The Applicant seeks to take TP of land to permit construction or maintenance of the Proposed Development. This is identified on the Land Plans [REP5-004] as being shaded yellow. These plots are set out in Schedule 10 of the Recommended DCO.

### Additional Land Request

- 9.4.12. At D2 [REP2-003], [REP2-038], [REP2-03]9 and [REP2-040], the Applicant submitted a request to amend the CA of land. All changes were within the Order Land. Table 9.3 lists the requests for the following additional CA land for freehold:

**Table 9.3: Applicant's Request for CA of Additional Land**

Plot Nos.	Change	Reasons
9/12	Extended Plot 9 westwards in a 'V' shape – as illustrated in sheets 2 and 3 of the Applicant's D2 submission [REP2-038] resulting in decrease in size of Plot 12.	Inconsistency with Works Plans [APP-009] and updated [AS-011] in which a larger area is shown. The Applicant confirmed at the CAH held on Thursday 6 December 2018 [PD-015] that this was due to a simple oversight on its part.

Plot Nos.	Change	Reasons
	Both plots affect the same APs.	
62/65	Extend Plot 62 in its south-eastern most point, reducing the size of Plot 65.  Both plots affect the same APs.	To compensate the existing AP on which the land, which would contain an oil separator and attenuation tank, cannot be farmed and as such serves as no purposeful use to the AP.

- 9.4.13. The Applicant also sought interchanges to plots along the route of Work No 7 (gas pipeline), which involved certain sections of land within plots being swapped between CA for new rights, and land required for TP.
- 9.4.14. The ExA made a Procedural Decision on Thursday 6 December 2018, which was orally given at the CAH1 held on the same day [EV-015] and confirmed in writing the following day [PD-010], that we had decided to accept the proposed provision (for CA of additional land) into the Examination and reminded the Applicant of its responsibilities under Regulation 7, 8 and 9 of the CA Regulations. Three additional responses were received [RR-321], [RR-322], and [RR-323]; none from APs, and no concerns or objections were raised.
- 9.4.15. As required by Regulation 15(2) of the CA Regulations, the ExA notified all APs and IPs and held a second CAH held on Tuesday 12 February 2019 [EV-018]. No APs or IPs raised any concerns or comments in respect to the additional land request.

### **Statutory Undertakers' Land**

- 9.4.16. Work No 8 (electrical connection works) would be required to connect to the NGET's existing substation, identified as Plot 5 on the Land Plans [REP5-004]. CA of new rights are sought on this land. The SoR [REP3-010] states that it is anticipated that the works can be carried out under a connection agreement. The same principles apply to Works No 6 (AGI) in respect to connection to the NGG Feeder gas pipeline. Protective provisions are proposed to protect the interests of NGET; this is set out in Schedule 12 of the Recommended DCO.
- 9.4.17. In its WR [REP2-044] NGET states that elements of Plot 5 as shown on the Land Plans [AS-010], known to it and in this Examination as 'the limbs', were deemed to be excessive and did not reflect the outcome of commercial discussions between the parties. Because the 'limbs' contain existing operational assets belonging to NGET, it should not be subject to CA.
- 9.4.18. The Applicant responded at D3 [REP3-024] that it was in active discussion the NGET in relation to protective provisions and/or

confidential asset agreements, and that it expected such matters to be concluded before the close of the Examination. The ExA requested updated to this position at the CAH [EV-015] and in its FWQ CO 2.1 [PD-014]; the responses given by both [REP6-013] and [REP6-020] was the same.

- 9.4.19. On the day of the close of the Examination on 4 April 2019, NGET/NGG wrote to the ExA [AS-142] stating that an agreement had been reached on an appropriate form of Asset Protection Agreement and protective provisions wording within the final draft DCO submitted at D9 [REP9-004]. Because engrossments of the Agreements are at an advanced stage with legal teams, NGET/NGG states that they were withdrawing their holding objection.
- 9.4.20. The final draft DCO submitted at D9 [REP9-004] deleted the protective provisions in respect to the EA. The Schedule of Changes document also submitted by the Applicant at D9 [REP9-011] explains that the Protective Provision was removed following the removal of Articles 8(3) and (d) which delete the provisions disapplying the Water Resources Act 1991 and Environmental Permitting (England and Wales) Regulations 2016 due to refusal of consent by the EA under s150 of PA2008. The SoCG signed between the Applicant and the EA [REP9-009] identified no matters of disagreement.

## **9.5. EXAMINATION OF THE CASE FOR CA AND TP**

### **Alternatives**

- 9.5.1. In Chapter 5 of this Report, the ExA has examined the alternative locations for the Proposed Development, gas pipeline route and location for the AGI. A main consideration for the selection of the proposed route for the gas pipeline was because it was the shortest of all the considered alternative routes and would generate less land needed to be subject to CA.
- 9.5.2. The SoR [REP3-010] states that in order to provide CCS readiness, the GRF, the gas pipeline and the AGI there is no alternative but to seek to acquire land, new rights over existing land and the temporary use of land. It also asserts that a 'Do Nothing' scenario is not appropriate given what the Applicant considers to be the established national need for new energy generation as prescribed in NPS EN-1.
- 9.5.3. No IPs or APs raised any concerns in respect to alternatives in respect to CA or TP, and the ExA did not question this matter any further in the Examination.

### **Availability and Adequacy of Funds**

- 9.5.4. A FS [APP-023] updated at D2 [REP2-016] accompanies the Application which includes a full statement of accounts. The FS [REP2-016] states that the company and its parent company have net assets in excess of £1.7bn. The project costs of the Proposed Development would be approximately £600m which include all construction costs, inflation and

contingencies. This cost would also cover blight; the FS [REP2-016] stating that the Applicant has sufficient funds to meet the cost of acquiring these interests at whatever stage they are served.

- 9.5.5. The FS [REP2-016] also states that the estimate factors in compensation payable in respect of any CA of land and rights over land, which is predicted to equate to approximately £400,000. This latter element was initially absent from the FS submitted with the application [APP-023] but was included in the updated version [REP2-016] following the ExA WQ CA 1.6 [PD-006]. Here, the Applicant justified the compensation costs as being formulated through independent valuations and estimates from drainage, crop loss and professional fees.
- 9.5.6. The FS [REP2-016] states the Proposed Development would be funded from the cash reserves of the Applicant and its parent company. Construction costs will be funded from a combination of these cash reserves and debt finance, with the combination to be determined dependent on market conditions at the time of construction. The Applicant concludes [REP2-016] that these funds would be sufficient to meet all of the project costs, and that it has between itself and its lenders the extensive experience of financing major capital projects.
- 9.5.7. It was suggested by a number of RRs that the project costs would render the scheme unviable. However, none were substantiated in evidence during the Examination. The ExA did not feel that sufficient doubt had been raised by IPs to question the Applicant about its finances. Aside from the question raised in respect to compensation payments discussed above [PD-006], the ExA did not question this particular matter any further in the Examination.

### **Matters Raised in the Examination**

- 9.5.8. No APs or IPs raised any outright objections to land being subjected to CA or TP during the Examination. In the SoR submitted with the Application [APP-022], the Applicant states that it was hoping to secure private agreements for all the land required for CA, such that the powers in the Act may not be necessary to use. The ExA has at regular intervals throughout the Examination, including at both the CAH1 held on Thursday 6 December 2018 [EV-015] and the CAH2 held on Tuesday 12 February 2019 [EV-018], requested the Applicant update the ExA of how those negotiations were progressing particularly with those concerning CA freehold and new rights on land which involved other APs.
- 9.5.9. At the close of the Examination on 4 April 2019, the Applicant submitted a Schedule of Negotiations document [AS-138] setting out where those discussions were. It confirms that, with the exception of Mr Watson's land concerning Plots 8, 10, 13 and 15 as shown on the Land Plan [REP5-004], that all are now signed, or that Heads of Terms have been agreed and are at an advanced stage of being finalised. The ExA was informed at the ISH2 held on Tuesday 12 February 2019 [EV-018] that Mr Stones, an AP, had been taken ill and as such private agreements with him have as yet not been finalised. Additional APs identified by the Applicant in the BoR [REP8-004] had also not signed.

- 9.5.10. The principal issue of concern for the ExA concerned Plot 8, as shown on the Land Plans at that time [AS-010]. The ExA considered that insufficient justification had been advanced by the Applicant for the need for the entirety of Plot 8 as shown on the original Land Plan [AS-010] to be CA for the freehold. This was because only the southern and western portions of it are required for Work No 10A (CCS readiness); the remaining northern and eastern sections were required for Work No 11 (landscaping).
- 9.5.11. At the CAH1 held on Thursday 6 December 2018 [PD-014], the ExA sought this justification. The Applicant responded orally at the event; confirmed in its post-hearing submission [REP4-010] that it would remove this portion of the land to a request for new rights only. This change was duly made at D5 with the submission of updated Land Plans [REP5-004] and Schedule 8 within the draft DCO [REP5-011].
- 9.5.12. At the CAH1 held on Thursday 6 December 2018 [PD-014], the ExA raised concerns regarding CA of the freehold of the southern and eastern sections of Plots 10 in respect of Work No 10C and 11 (CCR readiness and landscaping) and the south eastern section of Plot 62 in respect of Work No 6A (AGI). The need for CA of the freehold was explained by the Applicant both at the event and also in its post hearing submissions [REP4-010]. The ExA accepted the response given and did not pursue the matter further in the Examination.
- 9.5.13. The ExA sought further explanation in WQ CO 1.3 [PD-006] for the width and land take of Work No 7 (gas pipeline) particularly as it widens considerably as it approaches Plot 9 as indicated in the Land Plan [REP5-004]. In its written response [REP2-035] and at the CAH held on Thursday 6 December 2018 [EV-015] the Applicant explained the wider land to the west of Plot 9 was necessary as it could be clarified at this stage where the pipelines would be laid as it approached the gas recovery facility. The ExA did not pursue the matter further in the Examination.
- 9.5.14. The additional land application sought by the Applicant, submitted at D2 [REP2-038], [REP2-039] and REP2-040] and summarised in Table 8.2 above was subject to examination at the CAH1 held on Thursday 6 December 2018 [PD-015]. The ExA questioned and clarified the need for the additional land application sought by the Applicant, specifically why it was necessary and why this had not been identified earlier in the process. The Applicant responded; confirmed in its post-hearing submissions [REP4-010] that the changes were identified as the project evolved and more detailed work was undertaken. Notably, the need to extend the size of Plot 9 for CA of the freehold occurred because of an inconsistency with the Works Plans for Work No 5 (NGRF).

### **Outstanding Matter in the Examination**

- 9.5.15. Mr Watson in respect to Pots 10, 13 and 15 as shown on the Land Plan [REP5-004] for Work No 10 (CCS readiness) raised consistent concerns throughout the Examination, including attendance at both the CAH1 held on Thursday 6 December 2018 [EV-015] and CAH2 held on Tuesday 12

February 2019 [EV-018], that he had not been able to agree terms with the Applicant, but that talks were ongoing.

- 9.5.16. At the CAH1 held on Thursday 6 December 2018 [EV-015], Mr Watson in respect to Plots 10, 13 and 15 as shown on the then latest iteration of the Land Plan [REP2-006] explained that he was unclear why his land was necessary to be subject to CA, when it could seek to surrender the tenancy through the Agricultural Holdings Act 1986. The Applicant responded, confirmed in its written submission at D4 [REP4-010] that while the tenancy could be terminated through other legislation, the plots were also required for Work No 9B (construction laydown) and that because Mr Watson does not want the land returned to him after the end of Work No 9B (construction laydown) and for other commercial reasons it was appropriate to use the powers in PA2008 to acquire the land.
- 9.5.17. Mr Watson also raised concerns [EV-015] as to the land required for Work No 9B (construction laydown) given that the then Outline CWTP [REP2-021] indicated that all construction deliveries will be to the west of New Road, not the east. The Applicant responded [EV-015] and [REP4-010] that the Outline CWTP [REP2-021] may contain an error. The Applicant subsequently updated the Outline CWTP and Outline CTMP for D4 [REP4-013] and [REP4-014] respectively. The details of which are discussed in more detail in Chapter 5 of this Report. The ExA did not feel it was necessary to question this matter further.
- 9.5.18. Notwithstanding, Mr Watson repeated his concerns in a letter submitted on the day before the close of the Examination, 3 April 2019 [AS-131]. It such gave no opportunity for the ExA to pose further questions or for the Applicant to respond to it, should it feel it needs to do so. We nonetheless draw a conclusion on this outstanding matter below.

## **9.6. FINDINGS ON MATTERS RAISED IN THE EXAMINATION**

- 9.6.1. The ExA has examined the request against s122 of the PA2008 having also regard to the CLG Guidance.
- 9.6.2. The land sought for the Proposed Development and subject to CA is land required for the purposes of s122(2)(a) and (b) of PA2008 and meets the test set out in that section. The land proposed to be taken is required to facilitate or be incidental to the development for the purposes of providing those Works identified in Table 9.2 above.
- 9.6.3. The ExA is satisfied that the land sought for CA freehold as indicated at the start of the Examination and as indicated on the Land Plans [AS-010] has been adequately justified and is necessary to facilitate the Proposed Development. The ExA is satisfied that the Applicant has adequately explained and justified the need for the additional land request identified in Table 9.3 above. The ExA agrees with the Applicant that the reduction in the amount of CA freehold for Plot 8 was necessary as the original request [AS-010] had not been adequately justified. The revised Plot 8 and subsequent creation of Plot 8A are now justified.

- 9.6.4. The ExA is satisfied that the land required for CA of new rights, in particular the land take the gas pipeline corridor has been sufficiently justified both in the ES [APP-069] to [APP-067] and by the Applicant in its response to WQ [REP2-035] on the matter.
- 9.6.5. The ExA is satisfied that the land to be taken is no more than is reasonably required and the proposed land-take is proportionate. The ExA is satisfied that CA for land within the Power Station Site is necessary as any existing right or easement could endanger or severely interfere or impede the project's delivery. The circumstances of s122(2)(c) of the PA2008 do not arise in this Application.
- 9.6.6. The ExA is satisfied that the Applicant has considered all reasonable alternatives. The selection of the application site for the Proposed Development is manifestly obvious given its previous use and existing grid connections. We are equally satisfied that the ES [APP-072] and the SoR [REP3-010] have satisfactorily explained the route selection of Work No 7 (gas pipeline), and that it is the shortest possible route involving the least amount of CA and TP necessary to facilitate its construction. The ExA is also satisfied that the Proposed Development is adequately funded, and that all reasonable alternatives have been explored.
- 9.6.7. Turning to the question of a compelling case in the public interest to acquire the land (s122(3) of PA2008). In the first instance, the ExA must state that given the limited need for the Proposed Development and its failure to deliver overarching objectives of the NPSs, which we discuss in more detail in the earlier Chapters in this Report, the ExA cannot conclude that such a compelling case exists.
- 9.6.8. However, the ExA agrees that the NPSs identify a national need for this type of infrastructure generally; and that some benefits exist in the planning balance. On the assumption that the SoS concludes that the Proposed Development entirely accords with the NPSs, and/or its adverse effects do not outweigh its benefits, it follows that a compelling case in the public interest exists.
- 9.6.9. In these circumstances, the ExA has considered whether the public benefit in delivering the Proposed Development would outweigh the private loss. In undertaking this task, the general absence of or settlement of objections aside, it is fair to conclude that there are a small number of nevertheless potentially substantial individual private losses (and indeed some associated public or community losses) that flow from the CA and TP required by Proposed Development.
- 9.6.10. In most cases, private agreements have been reached between the Applicant and APs such that the Applicant should not need to trigger CA. There are some outstanding APs identified late in the Examination, but the ExA has not been given any cause to find that a suitable private agreement would not subsequently be reached.
- 9.6.11. While we acknowledge Mr Watson's representation submitted on 3 April 2019 [AS-131], the ExA nevertheless finds that the Applicant's responses

on those matters [REP4-010] have satisfactorily addressed the issues. The ExA does not consider it is appropriate to rely on other legislation to assemble land necessary to implement the Proposed Development; where such legislation may prove unenforceable or indeed may be revoked, rescinded or amended to the extent that it would render the assembly of land and the implementation of the Proposed Development as an impossibility. The ExA considers the Outline CTMP [REP4-014] and Outline CWTP [REP4-013] adequately justify the amount of land required for Work No 9B (construction laydown). The issue of concern appears to rest along financial matters; which fall outside the scope of the ExA's remit for consideration.

- 9.6.12. The ExA has examined the request against s123 of the PA2008. The ExA is satisfied that the Applicant has taken all reasonable steps to notify all APs with an interest in the land required for CA and TP, and that it has followed the prescribed procedure. The ExA is satisfied that the legal interests in all the plots of land included in the final submitted version of the BoR [REP8-003] and shown on the Land Plans [REP5-004] would be required for both the principal development and for land required to facilitate that provision.
- 9.6.13. Accordingly, the ExA recommends that the SoS can be satisfied that, should they conclude, contrary to the ExA's recommendation, that the Proposed Development entirely accords with the NPSs, and/or that the adverse effects do not outweigh its benefits, the CA tests set out in s122 and s123 of the PA2008 have been met. The benefits of the scheme outweigh any private loss of land for a temporary period for the construction of the necessary infrastructure, and inconvenience through any maintenance activities required.
- 9.6.14. S127 and s138 of the PA2008 are met insofar as the Proposed Development would not cause serious detriment to the carrying on of the undertaking. Protective provisions of the Statutory Undertakers would be preserved by Schedule 12 of the Recommended DCO.
- 9.6.15. As far as human rights are concerned, we are satisfied that the Examination has ensured a fair and public hearing; that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

## **9.7. UNIT X ONLY CONSENT**

- 9.7.1. In our letter to the Applicant dated 14 March 2019 issued under R17(3) [PD-018], the ExA explored the possibility open to the SoS that they may decide only to consent Unit X and associated infrastructure, that is to say not consent Unit Y. We requested information on the implications for the Proposed Development.



9.7.2. Specifically concerning matters of CA, the Applicant responded at D9 [REP9-016], [REP9-019] and [REP9-020] stating that the only change concerns Plot 5 in connection with Work No 8 (electrical connections) whereby a smaller area of land would be required as Work 8B would no longer be needed. This plot lies entirely within the Drax Power Station compound. The SoS should note that the Works Plans were not updated before the close of the Examination to reflect the removal of Work 8B should only Unit X be consented.

9.7.3. Therefore, there would be very little change to the land required for CA. Accordingly, the assessment and conclusions discussed above in this Chapter do not fundamentally change should the SoS determine that consent should be given for Unit X. Accordingly, the SoS can be satisfied the tests for CA as set out in s122, s123, s127 and s138 are equally met in this circumstance.

## **9.8. CONCLUSION**

9.8.1. If the SoS decides that the case for development consent is made, then the ExA recommends, for the reasons given above, that the case of CA and TP has been made, and that it accords with the relevant tests of the PA2008.

## **10. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

### **10.1. INTRODUCTION**

- 10.1.1. The Application draft DCO [APP-020] and the EM [APP-021] were submitted by the Applicant as part of the Application for development consent. The EM describes the purpose of the draft DCO as originally submitted, with each of its Articles and Schedules.
- 10.1.2. The Application draft DCO [APP-020] was broadly based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009; but departed from those clauses to draw upon drafting used in made Orders for similar development under the PA2008, the Transport and Works Act 1992 and other Acts authorising development. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO and a comparison with them has been provided as part of the Application [APP-020]. Precedent cases have also been considered where appropriate. The draft DCO [APP-020] and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the PA2008.
- 10.1.3. This Chapter provides a summary of the main changes made to the DCO during the Examination process, between the Application draft DCO and a final preferred draft DCO submitted by the Applicant at D9 [REP9-004]. We do not report on every change made in the updated versions. This is because many amendments were made as a result of typographical errors; slight revisions of the wording following either private discussion between the Applicant and relevant IPs or from their WRs, or as a result of minor changes following WQs [PD-006] and FWQs [PD-014].
- 10.1.4. The SoS will know from earlier Chapters in this Report that the ExA recommends that the consent for the Order should be withheld. However, should the SoS disagree, this chapter discusses the Recommended DCO for the Proposed Development as made by the Applicant.
- 10.1.5. The ExA has prepared two Recommended DCOs. They are:
- The Recommended DCO for the Proposed Development as made by the Applicant, which can be found at Appendix D of this Report; and
  - the Recommended DCO for Unit X only which can be found at Appendix E of this Report.

### **10.2. THE DCO AS APPLIED FOR Structure**

- 10.2.1. The Recommended DCO is structured as follows:

- Part 1, Article 1 sets out how the Order may be cited and when it comes into force. Article 2 sets out the meaning of various terms used in the Order;
- Part 2, Articles 3 to 8 provide development consent for the Proposed Development, and allow it to be constructed, maintained and operated. Articles 6 and 7 set out who has the benefit of the powers of the Order and how those powers can be transferred. Article 8 permits the application and modification of other statutory provisions;
- Part 3, Articles 9 to 15 provide for the Undertaker to be able to carry out works to and within streets, alter layouts, to create or improve accesses, to temporarily or permanently stop up streets and public rights of way, and to undertake agreements with street authorities;
- Part 4, Articles 16 to 18 concern supplemental powers relating to discharge of water, authority to survey land and removal of human remains;
- Part 5, Articles 19 to 33 provide for the Undertaker to be able to compulsorily acquire the Order Land and rights over/within it, and to be able to temporarily use parts of the Order Land for the construction or maintenance of the Proposed Development. The provisions provide for compensation to be payable to Affected Persons in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to equipment of Statutory Undertakers;
- Part 6, Articles 34 and 35 provide powers in relation to trees which need to be removed or lopped in relation to the Proposed Development and any protective works to buildings; and
- Part 7, Articles 36 to 44 is concerned with miscellaneous and other general matters and compensation payment guarantees.

10.2.2. There are 14 Schedules to the Order. These are:

- Schedule 1 is the description of the Proposed Development;
- Schedule 2 sets out the 28 Requirements;
- Schedules 3, 4, 5, 6 and 7 list the streets subject to street works; permanent and temporary alterations to the layout; access maintenance; and PRowS that would be temporarily and permanently stopped up;
- Schedules 8, 9 and 10 list the plots as shown on the Land Plan [REP5-004] land which would be subject to CA of new rights and TP, as well as compensation enactments;
- Schedule 11 deals with the procedure for discharging requirements
- Schedule 12 lists the provisions protecting Statutory Undertakers and their apparatus
- Schedule 13 are the design parameters; and
- Schedule 14 lists the certified documents.

10.2.3. Table 10.1 below shows the draft DCO [APP-020] and its updates throughout the Examination as follows:

**Table 10.1: Iterations of the draft DCO post-submission**

<b>Deadline No.</b>	<b>Examination Library Reference</b>	<b>Principle Areas for Change</b>
N/A	[AS-012]	Minor wording changes to Schedule 1 Work No 7B, Schedule 3
2	[REP2-014]	<p>Removal of Stage 0 works and subsequent amendments resulting from that change;</p> <p>Insertion of new Schedule to list certified plans;</p> <p>Changes to definitions, principally “authorised development” and “commence” following ExA WQs [PD-006] and others following ongoing discussions with IPs.</p> <p>Insertion of new Requirement 13 (flood risk mitigation) and substantial re-wording of Requirement 14 (ground conditions) following and at the request of the EA as set out in its RR [RR-292] and WR [REP2-047] and of ongoing discussions between the IPs.</p> <p>Deletion of Requirement 21 (combined heat and power)</p> <p>Insertion of Requirement 24 (Local liaison committee) following ongoing discussions with IPs.</p> <p>Deletion of Schedule 2 Part 3 following deletion of Stage 0 works.</p>
3	[REP3-007]	<p>Deletion of Schedule 14 and replaced with additional paragraphs in Article 12;</p> <p>Reflection of design changes submitted at D3.</p>
5	[REP5-011]	<p>Changes following ongoing discussions with IPs;</p> <p>Insertion of new Requirement 3 and amendment to Requirement 10 following discussions at the ISH [EV-015];</p>

Deadline No.	Examination Library Reference	Principle Areas for Change
		Changes to Schedule 12 following ongoing discussions with IPs regarding protective provisions.
7	[REP7-003]	Changes to definitions and Requirements following ExA FWQs [PD-014] and matters raised at the ISH3 [EV-020] and [EV-021], and others following ongoing discussions with IPs.
9	[REP9-004]	<p>The final draft DCO for the development as proposed (Units X and Y) following the recommended changes set out by the ExA [PD-016]</p> <p>Re-insertion of combined heat and power requirement as Requirement 28.</p> <p>Changes to protective provisions – deletion of Part 3 (EA); changes to Parts 4 and 5 (NGET/NGG); and insertion of new Part 5 (Northern Powergrid).</p> <p>Deletion of Article 8(3)(c) and (d)</p>
9	[REP9-018] and [REP9-021]	The alternative draft DCO should the SoS determine to make the Order for Unit X only.

- 10.2.4. No IP raised any concern with the description of the authorised development during the Examination. No IP raised any concern with the description of the works or the documents to be certified. We had some concerns with some definitions in the draft DCO submitted with the Application [APP-020] and these are discussed below.

### 10.3. SUMMARY OF MAIN CHANGES ACCEPTED DURING EXAMINATION

- 10.3.1. As stated above, it is not the intention of the ExA to list each change made to the various iterations of the draft DCO. This would make this section of the Report unnecessarily lengthy and arduous, particularly as many of the changes did not raise any concerns from any IPs, or did it require further examination by the ExA. If not reported below, the ExA considers that the SoS can be satisfied that other matters raised in WQs [PD-006] and FWQs [PD-014] were minor in nature and have been satisfactorily addressed by the Applicant.

10.3.2. Table 10.2 below sets out the main provisions in respect of matters that required further discussion at the ISH2 on the draft DCO held on Thursday 6 December 2018 [EV-014], or at the ISH3 held on Tuesday 12 February 2019 [EV-020] and [EV-021]. It also lists the provisions the ExA requested to be changed when we issued our schedule of changes to the draft DCO [PD-016] and the response received by the Applicant at D8 [REP8-013]. References to Drafting Guidance means the Inspectorate's Advice Note fifteen: Drafting Development Consent Orders.

**Table 10.2: Accepted changes to the DCO in the Examination**

Provision	Examination Matter	Resolution
<b>Part 1</b> <b>Article 2</b> <i>"Commence"</i>	Concerned that the commencement of Unit Y was not tightly controlled.	Applicant subsequently amended wording at D5 [REP5-011] to include a phasing plan.
<b>Part 1</b> <b>Article 2</b> <i>Interpretation</i> <i>"stage 1"</i> <i>"stage 2"</i>	ExA put forward [REP7-003] new wording to define "stage 1" and "stage 2".	Applicant agreed but tweaked wording further at D9 [REP9-004].
<b>Part 1</b> <b>Article 2</b> <i>Interpretation</i> Paragraph (3)  <b>Schedule 1</b> Work No 7	Delete use of "approximately" after definition.	Corrections made at D8 [REP8-013].
<b>Part 1</b> <b>Article 2</b> <i>"Maintain"</i>	ExA had concerns the definition was insufficiently precise and could allow unmonitored and cumulative works to take place under the guise of "maintenance".	Applicant altered wording at D9 [REP9-004] following our suggested draft wording [PD-016].
<b>Part 1</b>	ExA had concerns the definition was	Applicant altered wording to this definition and the

Provision	Examination Matter	Resolution
<b>Article 2</b> <i>Permitted Preliminary Works</i> <b>Schedule 2</b>	insufficiently precise, and such works subsequently undermine the reports required to discharge Requirements on those matters.	affected Requirements at D2 [REP2-014].
<b>Part 2</b> <b>Article 8</b> <i>Application and modification of statutory provisions</i>	The ExA raised concerns in WQ DCO 1.7 [PD-006] that this Article could not apply or modify statutory provisions pursuant to s120(5) of the PA2008 without the express consent of the relevant regulators.	Applicant confirmed that it had the consent from the Selby Area IDB Article 8(3)(a) and (b). Articles 8(3)(c) and (d) were deleted at D9 [REP9-004] following a refusal of consent by the Environment Agency under s150 of the Planning Act 2008.
<b>Part 3</b> <b>Article 13</b> <i>Permanent stopping up of public rights of way</i> Paragraphs (3)(a) and (4) <b>Part 6</b> <b>Article 35</b> <i>Protective works to buildings</i> Paragraphs (5), (7), (8), (9) and (10)	The ExA [PD-017] identified uses of "shall", and we recommended that Drafting Guidance requires ambiguity to be removed.	Amendment made by the Applicant at D9 [REP9-004].
<b>Article 39</b> <b>Article 41</b>	These were considerably altered during the Examination without sufficient explanation.	The Applicant responded [REP2-035] that listing the certified documents in a Schedule was an easier and clearer way of listing the certified documents, and Article

Provision	Examination Matter	Resolution
		41 was amended to adhere to Drafting Guidance.
<b>Schedule 2</b> Requirement 7 (9)	The ExA recommended [PD-016] minor wording changes to make it clear that it should be the relevant planning authority approving the pedestrian bridge design works.	Applicant disagreed [REP8-013] stating that it is correct for this to be discharged by relevant highway authority only.
<b>Schedule 2</b> Requirement 10	ExA suggested at the ISH on the draft DCO held on Thursday 6 December 2018 [EV-014] that temporary and permanent lighting should be separated.	Amendment made by the Applicant at D5 [REP5-011].
<b>Schedule 2</b> Requirement 18 (3)	ExA felt [PD-016] that it was not clear whom would be responsible for the erection of notices.	Amendment made by the Applicant at D9 [REP9-004].
<b>Schedule 2</b> Requirement 28	<p>CHP Requirement was deleted at D2 [REP2-014]. Applicant explained that it was an unnecessary duplication with matters controlled by the EP regime.</p> <p>Matter discussed at ISH2 on draft DCO held on Thursday 6 December 2018 [EV-014] where Applicant stated CHP requirement was unnecessary because CHP matters are covered by other legislation.</p> <p>ExA considered that some areas (such as design) fell</p>	<p>Wording submitted by the Applicant at D6 [REP6-013] re-inserted at Requirement 28 at D9 [REP9-004].</p> <p>While the Applicant has no objection to its conclusion [REP6-013], the Applicant nevertheless maintains it is not needed.</p> <p>The ExA disagrees and includes it within the Recommended DCO. It is therefore for the SoS to</p>



Provision	Examination Matter	Resolution
	outside of the EP regime and as such, a CHP Requirement should be reinstated. We requested in FWQ DCO 2.2 [PD-014] and in our draft DCO [PD-016] that CHP Requirement be re-inserted as Requirement 28.	conclude whether to delete Requirement 28 of the Recommended DCO.
<b>Schedule 10</b> <i>Land of Which Temporary Possession May Be Taken</i>	Missing plot number identified [PD-016].	Amended by Applicant at D9 [REP9-004].
<b>Schedule 11</b> <i>Paragraph (4)</i>	The ExA raised concerns that the timescales for the appeal Inspector to operate within were inflexible and unrealistic.	Amendments made by Applicant at D9 [REP9-004].
<b>Schedule 12</b> <i>Protective Provisions Part 4 Paragraph 32(2)</i>	The ExA requested minor wording changes [PD-016] to avoid the use of archaisms.	Amendments made by Applicant at D9 [REP9-004].

## 10.4. CHANGES REQUIRED TO THE RECOMMENDED DCO FOR THE PROPOSED DEVELOPMENT

- 10.4.1. As indicated above, the Applicant accepted all but one of the suggested changes recommended by the ExA [PD-016], and the ExA has accepted the Applicant's suggested re-wording where it has been suggested in its D8 response [REP8-013]. The ExA has accepted the explanation given by the Applicant for the one case where the Applicant did not agree to a suggested change to Requirement 7(9).
- 10.4.2. Accordingly, there are no recommended additional changes necessary to the final draft DCO submitted at D9 [REP9-004]. Subsequently the Recommended DCO at Appendix D reflects the final draft of the DCO [REP9-004].
- 10.4.3. The SoCG signed between the Applicant and NYCC and SDC [AS-136] confirms that the scope of the powers being sought through the

Recommended DCO are appropriate. The Parties are agreed on the wording of the operative provisions of the Recommended DCO. NYCC and SDC are satisfied with the procedure and timescales provided for the discharge of Requirements, and there are no outstanding matters to be resolved.

- 10.4.4. We noted one small typographical error in the final draft DCO [REP9-003] in Part 6, Article 34(5) in which “publicly” had been misspelt. We have corrected this in the Recommended DCO. This typographical error also occurred in the Alternative DCO [REP9-018] which has also been corrected in the Alternative Recommended DCO.

## **10.5. THE ALTERNATIVE RECOMMENDED DCO FOR UNIT X CONSENT ONLY**

- 10.5.1. Should the SoS decide that the Order be made for Unit X only, then the ExA recommends that they make the Order which can be found in Appendix E of this Report.
- 10.5.2. The Applicant has provided a clean version of the Alternative DCO for a Unit X consent only [REP9-018], and a tracked changed version [REP9-021] which indicates those matters in the Recommended DCO for the Proposed Development which would need to be deleted. We should stress that the Applicant provided these documents at the request of the ExA [PD-017] and were done so on a without prejudice basis to its objection to the SoS taking this course of action. The ExA is satisfied those suggested changes are accurate to reflect a Unit X only consent.
- 10.5.3. The Alternative Recommended DCO is largely unchanged from the version submitted by the Applicant at D9 [REP9-018] and can be found at Appendix E of this Report.
- 10.5.4. There is however, one consistent drafting error in Part 1, Article 2. The final draft Unit X only DCO [REP9-018] refers to the documents in the bullet list below as being identified in Table 15 of Schedule 14 of the DCO. This is an error and should read Table 17 of Schedule 14. This is because Schedule 13 of the final draft Unit X only DCO [REP9-018] states that Tables 15 and 16 are not in use. The final draft DCO [REP9-004] also lists the table in Schedule 14 as “Table 17”. The Alternative Recommended DCO alters the following to read as “Table 17”.
- The BoR;
  - the CHP Statement;
  - the ES;
  - the FRA;
  - the Land Plans;
  - the Outline CEMP;
  - the Outline CTMP;
  - the Outline CWTP;
  - the Outline LBS;
  - the Outline PRow; and
  - the Works Plans.

## **10.6. CONCLUSION**

- 10.6.1. Should the SoS disagree with the recommendation of the ExA, the SoS can be satisfied that the ExA has considered all iterations of the draft DCO as provided by the Applicant, and we are satisfied that it has addressed outstanding matters.
- 10.6.2. There are no recommended changes to the final draft DCO [REP9-004]. Therefore, the Recommended DCO in Appendix D of this Report reflects that final draft DCO submitted by the Applicant. The SoS should make this Order if they are satisfied the Proposed Development should be consented.
- 10.6.3. However, if the SoS is minded to make the Order for Unit X only, the ExA has prepared an Alternative Recommended DCO in Appendix E of this Report. The changes that would be necessary to the Recommended DCO in Appendix D to essentially remove the Unit Y works from it are set out by the Applicant in its D9 submission [REP9-018] and [REP9-021], and briefly listed in Chapter 8 of our Report.

## **11. SUMMARY OF FINDINGS AND CONCLUSIONS**

- 11.1.1. The ExA concludes that the energy suite of NPSs still stands strongly for the proposition that there is a need for additional energy infrastructure in general. However, in circumstances where decarbonisation is a key policy objective and Government commitment, where a substantial body of new fossil fuel generating capacity has been consented and developed since the NPS EN suite policy was designated, and where the Proposed Development would add a substantial volume of further fossil fuel generation capacity until 2050, the ExA concludes that the Applicant has not demonstrated that the Proposed Development on balance meets an identified need for gas generation capacity when assessed against the Energy NPSs overarching policy objectives of security of supply, affordability and decarbonisation. The overall effect in the planning balance is negative.
- 11.1.2. The ExA concludes, that a total increase in GHG emissions of +90% is a significantly adverse effect of the Proposed Development. As such, the ExA concludes the Proposed Development will not accord with the relevant NPSs, and would undermine the Government's commitment, as set out in the CCA2008, to cut GHG emissions. The ExA considers that total GHG emissions are likely to be higher than that set out in the ES [APP-083] (as we have already stated in previous Chapters of this Report). It follows that the impact of the Proposed Development on climate is a greater severity of significant adverse effects. The ExA has accordingly given it greater weight in decision making and in the Planning Balance. The effect in the planning balance is negative.
- 11.1.3. The Proposed Development would have a significant adverse effect on landscape character and visual receptors owing to its sheer size and scale. However, the ExA accepts that little in the way of mitigation can be undertaken; this being acknowledged in NPS EN-1, and that the Proposed Development would only readily be visible against the already significant sized infrastructure within the power station complex. Therefore, this negative impact has not weighed heavily in the ExA's overall conclusions.
- 11.1.4. The ExA acknowledges that there are benefits associated with the Proposed Development biodiversity, socio-economics and that it would re-use an existing site and infrastructure, and these weigh in favour of the Proposed Development. There would be a neutral impact on the environment, which are examined in Chapter 5 and summarised in Section 7.3 of Chapter 7. However, and in applying s104(7) of the PA2008, the Proposed Development's failure to deliver carbon reduction objectives in accordance with the principles of NPS EN-1 and the adverse impact of the total GHG emissions generated by the Proposed Development are considered by the ExA to outweigh the benefits of the Proposed Development, and that consent should be withheld.

- 11.1.5. The SoS could conclude (in relation to the Proposed Development as changed) that none of the exceptions in s104(4) to (8) apply and that the relevant NPSs require development consent to be granted either:
- For both units X and Y as in the original application; or
  - for unit X only if the SoS is satisfied that the application as amended would not be so substantially changes as to be a materially different application and there are no issues of fairness.
- 11.1.6. In relation to the CA request, we are satisfied that the land required for CA and TP are either required for the Proposed Development or are required to facilitate or are incidental to the Proposed Development.
- 11.1.7. However, we cannot on balance conclude that there is a compelling case in the public interest because we are not satisfied that there is a need for this particular development.
- 11.1.8. If the SoS were to conclude that development consent should be granted (either for both X and Y or for only X) then we believe that there is a compelling case in the public interest and the ExA can recommend that the CA request (either in relation to the Proposed Development or to the Proposed Development as changed) is granted. This is because the conditions in s122, s123, s127 and s135 of the PA2008 relating to CA are met.
- 11.1.9. The Proposed Development would comply with the development plan and other relevant policy, all of which have been taken into account in this Report. We have had regard to the LIR [REP2-047] produced by NYCC and SDC in making this recommendation.
- 11.1.10. In making the DCO, the SoS would be fulfilling their duties under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the Natural Environment and Rural Communities Act 2006. Whilst the SoS is the competent authority under the Habitats Regulations, we conclude that the Proposed Development would not adversely affect the integrity of European sites and their qualifying species and habitats, and we have taken this into account in reaching our recommendation.
- 11.1.11. With regard to all other matters and representations received, we have found no other important and relevant matters, other than those which underpin our recommendation, that would individually or collectively lead to a different recommendation to that below.
- 11.1.12. The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

## **11.2. RECOMMENDATION**

- 11.2.1. For all of the above reasons, and in the light of our findings and conclusions on important and relevant matters set out in the report, we recommend that the Secretary of State for Business, Energy and

Industrial Strategy withholds consent for the Drax Power Station Re-power Project.

- 11.2.2. However, if the Secretary of State disagrees with the ExA's recommendation, then we recommend that the Secretary of State for Business, Energy and Industrial Strategy makes the Order for the Drax Power Station Re-power Project in the form recommended at Appendix D to this Report.
- 11.2.3. However, if the Secretary of State disagrees with ExA's recommendation, but finds that only Unit X should be consented, then we recommend that the Secretary of State for Business, Energy and Industrial Strategy makes the Alternative Recommended Order for the Drax Power Station Re-power Project in the form recommended at Appendix E to this Report.

**APPENDICES**

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## **APPENDIX A: THE EXAMINATION**



## APPENDIX A: THE EXAMINATION

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

<b>Date</b>	<b>Examination Event</b>
03 October 2019	Unaccompanied Site Inspection
04 October 2018	Preliminary Meeting
04 October 2018	Open Floor Hearing
11 October 2018	<b>Issue by ExA</b> <ul style="list-style-type: none"> <li>• Examination Timetable</li> <li>• ExA's Written Questions</li> </ul>
18 October 2018	<b>DEADLINE 1</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• Comments on updated application documents</li> <li>• Comments on Relevant Representations (RR)</li> <li>• Summaries of all RRs exceeding 1500 words</li> <li>• Statements of Common Ground (SoCG) requested by the ExA</li> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Notification by Statutory Parties of their wish to be considered as an IP by the ExA</li> <li>• Notification of wish to make oral representations at an Issue Specific Hearing (ISH)</li> <li>• Notification of wish to speak at any Open Floor Hearing (OFH)</li> <li>• Notification of wish to speak at any Compulsory Acquisition Hearing (CAH)</li> <li>• Notification of wish to attend an Accompanied Site Inspection (ASI) including suggested locations and justifications</li> <li>• Notification of wish to have future correspondence received electronically</li> <li>• Comments on any additional information/submissions received</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
06 November 2018	<b>Issue by ExA</b> <ul style="list-style-type: none"> <li>• Procedural Decision on Notification of Hearings</li> </ul>

## APPENDIX A: THE EXAMINATION

Date	Examination Event
08 November 2018	<p><b>DEADLINE 2</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Written Representations (WR's)</li> <li>• Summaries of all WR's exceeding 1500 words</li> <li>• Comments on SoCG's</li> <li>• Local Impact Reports (LIR) from any local authorities</li> <li>• Responses to ExA's Written Questions</li> <li>• Updated Compulsory Acquisition Schedule (Annex to Written Questions)</li> <li>• Draft itinerary for Accompanied Site Inspection</li> <li>• Comments on any additional information/submissions received by D1</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
22 November 2018	<p><b>DEADLINE 3</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on WR's</li> <li>• Comments on LIR's</li> <li>• Comments on responses to the ExA's Written Questions</li> <li>• Any revised/updated SoCG (if any)</li> <li>• The Applicant's revised draft Development Consent Order (dDCO)</li> <li>• Requests to attend Accompanied Site Inspection</li> <li>• Comments on any additional information/submissions received by D2</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
27 November 2018	<p><b>Issue by ExA</b></p> <ul style="list-style-type: none"> <li>• Application for Additional Land - Rule 17</li> </ul>
30 November 2018	<p><b>Issue by ExA</b></p> <ul style="list-style-type: none"> <li>• Procedural Decision to accept Non-Material Change</li> </ul>
04 December 2018	Accompanied Site Inspection
04 December 2018	Open Floor Hearing 2
05 December 2018	Issue Specific Hearing 1
06 December 2018	Issue Specific Hearing 2 on draft DCO
06 December 2018	Compulsory Acquisition Hearing 1
07 December 2018	<p><b>Issue by ExA</b></p> <ul style="list-style-type: none"> <li>• Procedural Decision to accept the proposed provision for the compulsory acquisition of additional land as part of the application</li> </ul>

## APPENDIX A: THE EXAMINATION

Date	Examination Event
13 December 2018	<b>DEADLINE 4</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Comments on any revised/updated SoCG (if any)</li> <li>• Comments on the Applicant's revised dDCO</li> <li>• Comments on any additional information/submissions received by D3</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
21 December 2018	<b>Issue by ExA</b> <ul style="list-style-type: none"> <li>• Request for further information - Rule 17</li> </ul>
09 January 2019	<b>DEADLINE 5</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• Any revised/updated SoCG</li> <li>• The Applicant's revised dDCO</li> <li>• Comments on any additional information/submissions received by D4</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
15 January 2019	<b>Issue by ExA</b> <ul style="list-style-type: none"> <li>• Procedural Decision on Notification of Hearings</li> </ul>
15 January 2019	<b>Issue by ExA</b> <ul style="list-style-type: none"> <li>• Further Written Questions</li> </ul>
15 January 2019	<b>Issue by ExA</b> <ul style="list-style-type: none"> <li>• Procedural Decision to accept the proposed design changes to the original application</li> </ul>
30 January 2019	<b>DEADLINE 6</b>  Deadline for receipt of: <ul style="list-style-type: none"> <li>• Responses to the ExA's Further Written Questions</li> <li>• Comments on any revised/updated SoCG</li> <li>• Comments on the Applicant's revised dDCO</li> <li>• Comments on any additional information/submissions received by D5</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
12 February 2019	Compulsory Acquisition Hearing 2
12 February 2019	Open Floor Hearing 3
12 February 2019	Issue Specific Hearing 3

## APPENDIX A: THE EXAMINATION

Date	Examination Event
20 February 2019	<p><b>DEADLINE 7</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Comments on the ExA's Further Written Questions</li> <li>• Any revised/updated SoCG</li> <li>• The Applicant's revised dDCO</li> <li>• Comments on any additional information/submissions received by D6</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
28 February 2019	<p><b>Issue by ExA</b></p> <ul style="list-style-type: none"> <li>• Report on the Implications for European Sites (RIES)</li> <li>• ExA's proposed schedule of changes to the Draft DCO</li> </ul>
14 March 2019	<p><b>Issue by ExA</b></p> <ul style="list-style-type: none"> <li>• Request for further information – Rule 17</li> </ul>
21 March 2019	<p><b>DEADLINE 8</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on the RIES</li> <li>• Comments on the ExA's proposed schedule of changes to the Draft DCO</li> <li>• Final SoCGs</li> <li>• Applicant's final Compulsory Acquisition Schedule</li> <li>• Final updated Book of Reference</li> <li>• Comments on any additional information/submissions received by D7</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
28 March 2019	<p><b>DEADLINE 9</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Applicant's final DCO to be submitted in the SI template with the SI template validation report</li> <li>• Final updated Guide to the Application</li> <li>• Comments on any additional information/submissions received by D8</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>
04 April 2019	<b>EXAMINATION CLOSED</b>

## **APPENDIX B: EXAMINATION LIBRARY**

# **EN010091 Drax Re-power**

## **Examination Library**

**Updated – 05 April 2019**

This Examination Library relates to the Drax Re-power application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references are used within the Report on the Implications for European Sites and are used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they were submitted.

Please note the following:

- This was a working document and was updated periodically as the examination progressed.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice was not an examination document.
- This document contains references to documents from the point the Application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

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AoC-009	<a href="#">Yorkshire Dales National Trust</a>
AoC-010	<a href="#">Cumbria County Council</a>
AoC-011	<a href="#">North Yorkshire County Council</a>
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<b>Relevant Representations</b>	
RR-001	<a href="#">Sally Clark</a>
RR-002	<a href="#">Biofuelwatch</a>
RR-003	<a href="#">Ben Tarr</a>
RR-004	<a href="#">Breathe Clean Air Group</a>
RR-005	<a href="#">Carol Cooper</a>
RR-006	<a href="#">Charles Nelson</a>
RR-007	<a href="#">Christopher Stephen Wakeley</a>
RR-008	<a href="#">Clare Pargetern</a>
RR-009	<a href="#">David Geall</a>
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RR-011	<a href="#">David Somervell</a>
RR-012	<a href="#">Deborah Sawday</a>
RR-013	<a href="#">Duncan Law</a>
RR-014	<a href="#">Elspeth Barraclough</a>
RR-015	<a href="#">Esme North</a>



RR-016	<a href="#">Gabby Taylor</a>
RR-017	<a href="#">Grace Onions</a>
RR-018	<a href="#">Jackie Oversby</a>
RR-019	<a href="#">Jacqui Butterworth</a>
RR-020	<a href="#">Jon Skoyles</a>
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RR-057	<a href="#">Dr Geoffrey Mead</a>
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RR-059	<a href="#">Dr Peter Hirst</a>
RR-060	<a href="#">Elizabeth Potts</a>
RR-061	<a href="#">Jessica Winkler</a>
RR-062	<a href="#">Kristine Vaaler</a>
RR-063	<a href="#">L Warren</a>
RR-064	<a href="#">Lauren Mackenzie</a>
RR-065	<a href="#">Lyn Brayshaw</a>
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RR-067	<a href="#">Margaret Morris</a>
RR-068	<a href="#">May Erskine</a>
RR-069	<a href="#">Michelle Hayward</a>
RR-070	<a href="#">Mike Baker</a>
RR-071	<a href="#">Mike Williams</a>
RR-072	<a href="#">Ms Heather Marsden</a>
RR-073	<a href="#">Ms Rosemary A Clarke</a>
RR-074	<a href="#">Nikki Jones</a>
RR-075	<a href="#">Peter Westlake</a>
RR-076	<a href="#">Richard Howarth</a>
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RR-153	<a href="#">Mrs Caroline Stevenson</a>
RR-154	<a href="#">F D Simpson</a>
RR-155	<a href="#">Frances Sleaf</a>
RR-156	<a href="#">Simon Barton</a>
RR-157	<a href="#">Rebecca Coulthard</a>
RR-158	<a href="#">Greenpeace</a>
RR-159	<a href="#">Jacqueline Walkden</a>
RR-160	<a href="#">James Kavanagh</a>
RR-161	<a href="#">Clare Matheson</a>
RR-162	<a href="#">David Treadwell</a>
RR-163	<a href="#">Durham County Council</a>
RR-164	<a href="#">Julie Plumridge</a>
RR-165	<a href="#">Mark Hollinrake</a>
RR-166	<a href="#">Matthew Burns</a>
RR-167	<a href="#">Melissa McClements</a>
RR-168	<a href="#">Natalie Payne</a>

RR-169	<a href="#">Robert Edwards</a>
RR-170	<a href="#">Stuart Toll</a>
RR-171	<a href="#">Zoe Whiteside</a>
RR-172	<a href="#">David Lally</a>
RR-173	<a href="#">Frances Bowen</a>
RR-174	<a href="#">Graham Oliver</a>
RR-175	<a href="#">Lauren Tindle</a>
RR-176	<a href="#">Mr Charles Marshall</a>
RR-177	<a href="#">Peter Humble</a>
RR-178	<a href="#">Simon Erskine</a>
RR-179	<a href="#">Christine Way</a>
RR-180	<a href="#">Emily Scrivener</a>
RR-181	<a href="#">Mark Brown</a>
RR-182	<a href="#">Carole Shorney</a>
RR-183	<a href="#">Felix Haslam</a>
RR-184	<a href="#">Fuel Poverty Action</a>
RR-185	<a href="#">Harrogate District Friends of the Earth</a>
RR-186	<a href="#">John Snowdon</a>
RR-187	<a href="#">NATS LTD</a>
RR-188	<a href="#">Peter Daw</a>
RR-189	<a href="#">Janet Milton</a>
RR-190	<a href="#">Alicia Forsberg</a>
RR-191	<a href="#">Dr Shirleen Stibbe</a>
RR-192	<a href="#">Gilian Cleeve</a>
RR-193	<a href="#">Graham Lingley</a>
RR-194	<a href="#">Michael Andrews</a>
RR-195	<a href="#">Barry Dalglish</a>
RR-196	<a href="#">Philippa Roddis</a>
RR-197	<a href="#">Rebecca Wade</a>
RR-198	<a href="#">Christopher Keene</a>
RR-199	<a href="#">Claudia Riccomini</a>
RR-200	<a href="#">Dr Anna Johnson</a>
RR-201	<a href="#">Greg Peakin</a>
RR-202	<a href="#">Jamie Russell</a>
RR-203	<a href="#">Katarina Kositzki</a>
RR-204	<a href="#">Kevin Daws</a>
RR-205	<a href="#">Melanie Cartwright</a>
RR-206	<a href="#">Robin Gill</a>
RR-207	<a href="#">Stephen Vardigans</a>
RR-208	<a href="#">Teresa Fitzsimmons</a>
RR-209	<a href="#">David Plunkett</a>
RR-210	<a href="#">Dr Nicola Halls</a>
RR-211	<a href="#">Joseph Nicholas</a>
RR-212	<a href="#">Natural England</a>
RR-213	<a href="#">Deirdre Henderson</a>
RR-214	<a href="#">Nancy Inness</a>
RR-215	<a href="#">Deborah Loe</a>
RR-216	<a href="#">Erik Williams</a>
RR-217	<a href="#">Adrian Fielding</a>
RR-218	<a href="#">Glyn Roberts</a>
RR-219	<a href="#">Patricia Keogh</a>

RR-220	<a href="#">Roshan Lals</a>
RR-221	<a href="#">Caroline Snow</a>
RR-222	<a href="#">Pascoe Sabido</a>
RR-223	<a href="#">Ceri Pryke-Hendy</a>
RR-224	<a href="#">Christopher Connolly</a>
RR-225	<a href="#">Frack Free Exmoor Quantocks and Sedgemoor</a>
RR-226	<a href="#">Global Justice Now</a>
RR-227	<a href="#">Martin King</a>
RR-228	<a href="#">Public Health England</a>
RR-229	<a href="#">Steve Rolfe</a>
RR-230	<a href="#">Eleanor Leach</a>
RR-231	<a href="#">Felicia Ronnholm</a>
RR-232	<a href="#">Kate Griffin</a>
RR-233	<a href="#">Timothy I Mullen</a>
RR-234	<a href="#">Adam Whitworth</a>
RR-235	<a href="#">Canal &amp; River Trust</a>
RR-236	<a href="#">Historic England</a>
RR-237	<a href="#">Jenny Trigg</a>
RR-238	<a href="#">Mr. Sam Clements</a>
RR-239	<a href="#">Newland Parish Council</a>
RR-240	<a href="#">Tim Padmore</a>
RR-241	<a href="#">John Baker</a>
RR-242	<a href="#">Richard Stephens</a>
RR-243	<a href="#">Zeynep Erdogan</a>
RR-244	<a href="#">Catherine Cameron</a>
RR-245	<a href="#">Elmet &amp; Rothwell Green Party</a>
RR-246	<a href="#">Stephen Shillitoe</a>
RR-247	<a href="#">Will Dyson</a>
RR-248	<a href="#">Angela Smith</a>
RR-249	<a href="#">Carol hutchinson</a>
RR-250	<a href="#">Catherine Harrington</a>
RR-251	<a href="#">Catherine Smiths</a>
RR-252	<a href="#">Chris Redston</a>
RR-253	<a href="#">Chris White</a>
RR-254	<a href="#">Cllr Douglas Johnson</a>
RR-255	<a href="#">Duncan Liver, ore</a>
RR-256	<a href="#">Eileen Pearce</a>
RR-257	<a href="#">Helen Dryden</a>
RR-258	<a href="#">Irene Flack</a>
RR-259	<a href="#">Jane Lawson</a>
RR-260	<a href="#">Janice Feldermann</a>
RR-261	<a href="#">Jo Pycroft</a>
RR-262	<a href="#">Joe Downie</a>
RR-263	<a href="#">Lynne Peacock</a>
RR-264	<a href="#">Margaret Manning</a>
RR-265	<a href="#">Mrs Janet baarda</a>
RR-266	<a href="#">Paul Davison</a>
RR-267	<a href="#">Rosemary Frances Jarrett</a>
RR-268	<a href="#">Steve black</a>
RR-269	<a href="#">Tania Bustamante</a>
RR-270	<a href="#">A Gordon</a>

RR-271	<a href="#">Alison Shutt</a>
RR-272	<a href="#">Angela Forbes</a>
RR-273	<a href="#">ClientEarth</a>
RR-274	<a href="#">David Herbert</a>
RR-275	<a href="#">Ewa Barker</a>
RR-276	<a href="#">Ian Brown</a>
RR-277	<a href="#">Joseph Swift</a>
RR-278	<a href="#">Laurentia Johns</a>
RR-279	<a href="#">Mary Watson</a>
RR-280	<a href="#">Molly Crawford</a>
RR-281	<a href="#">Mr Michael Barry Heath</a>
RR-282	<a href="#">Rosie Sinfield</a>
RR-283	<a href="#">Virginia Shaw</a>
RR-284	<a href="#">AJ Rushton</a>
RR-285	<a href="#">Alicia Taylor</a>
RR-286	<a href="#">Angus Lavery</a>
RR-287	<a href="#">Beau Bulman</a>
RR-288	<a href="#">Commercial Boat Operators Association</a>
RR-289	<a href="#">Damian Swarbrick</a>
RR-290	<a href="#">Dr Fleur Visser</a>
RR-291	<a href="#">Elaine Hall</a>
RR-292	<a href="#">Environment Agency</a>
RR-293	<a href="#">Friends of the Earth Selby</a>
RR-294	<a href="#">Harry Carter</a>
RR-295	<a href="#">Janis Grant</a>
RR-296	<a href="#">Jennie Dixon</a>
RR-297	<a href="#">Jenny Shepherd</a>
RR-298	<a href="#">Julian May</a>
RR-299	<a href="#">Julie Gritten</a>
RR-300	<a href="#">Laura Ager</a>
RR-301	<a href="#">Laura Price</a>
RR-302	<a href="#">Lily Worfolk</a>
RR-303	<a href="#">Liz Cruse</a>
RR-304	<a href="#">Liz Postlethwaite</a>
RR-305	<a href="#">Michael Fairless</a>
RR-306	<a href="#">Michael Swarbrick</a>
RR-307	<a href="#">Nathan Roche</a>
RR-308	<a href="#">National Grid</a>
RR-309	<a href="#">North Yorkshire County Council</a>
RR-310	<a href="#">Oliver Wistanley Ramos</a>
RR-311	<a href="#">Paul Martyn</a>
RR-312	<a href="#">Peter Hardy</a>
RR-313	<a href="#">Robert Price</a>
RR-314	<a href="#">Roger Manser</a>
RR-315	<a href="#">Selby District Council</a>
RR-316	<a href="#">Skye Golding</a>
RR-317	<a href="#">From 55 on behalf of South Lakes Action on Climate Change Towards</a>
RR-318	<a href="#">Stephanie Robinson</a>
RR-319	<a href="#">Steve Jack</a>
RR-320	<a href="#">Yorkshire Wildlife Trust</a>
RR-321	<a href="#">The Coal Authority</a>

RR-322	<a href="#">Historic England</a>
RR-323	<a href="#">Kingston upon Hull City Council</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Notification of Decision to Accept Application</a>
PD-002	<a href="#">Section 51 advice to the Applicant</a>
PD-003	<a href="#">Section 55 Checklist</a>
PD-004	<a href="#">Rule 6 - Notification of the Preliminary Meeting</a>
PD-005	<a href="#">Notification of Procedural Decision</a> Notification of Procedural Decision regarding forthcoming Hearing
PD-005a	<a href="#">Notification of Procedural Decision</a> Initial choice of panel or single appointed person
PD-006	<a href="#">Examining Authority's Written Questions</a>
PD-006a	<a href="#">Rule 8 - Notification of Timetable for the Examination</a>
PD-007	<a href="#">Rule 13 - Notification of Hearings and Accompanied Site Inspection</a>
PD-008	<a href="#">Application for Additional Land - Rule 17</a>
PD-009	<a href="#">Notification of Procedural Decision</a> Notification of Procedural Decision regarding changes to the original application and request for further information
PD-010	<a href="#">Notification of Procedural Decision</a> Notification of Procedural Decision regarding Drax Power Limited's additional land application
PD-011	<a href="#">Proposed Provisions Checklist</a>
PD-012	<a href="#">Request for Further Information - Rule 17</a> Request for Further Information on the Proposed Changes to the Application
PD-013	<a href="#">Rule 13 - Notification of Hearings</a>
PD-014	<a href="#">Further Written Questions</a>
PD-015	<a href="#">Request for Further Information - Rule 17 , Notification of Procedural Decision - Rule 9</a>
PD-016	<a href="#">Notification of Procedural Decision</a> The Examining Authority's schedule of changes to the draft Development Consent Order
PD-017	<a href="#">Report on the Implications for European Sites (RIES)</a> Issued by the Examining Authority - 28 February 2019
PD-018	<a href="#">Request for Further Information - Rule 17</a>
PD-019	<a href="#">Notification of Completion of the Examining Authority's Examination</a>
<b>Additional Submissions</b> <b>(Please note: Reference Numbers AS-017 to AS-116, AS-120 to AS-122 and AS-127 are not in use)</b>	
AS-001	<a href="#">Drax Power Limited</a> Section 56 Notice
AS-002	<a href="#">Drax Power Limited</a> Section 51 Response Letter - Accepted at the discretion of the Examining Authority
AS-003	<a href="#">Drax Power Limited</a> Section 51 Response Letter Follow up - Accepted at the discretion of the Examining Authority

AS-004	<a href="#">Drax Power Limited</a> Application Guide Rev 003 - Accepted at the discretion of the Examining Authority
AS-005	<a href="#">Drax Power Limited</a> Book of Reference (Revision 002) - Clean - Accepted at the discretion of the Examining Authority
AS-006	<a href="#">Drax Power Limited</a> Book of Reference Schedule of Changes - Accepted at the discretion of the Examining Authority
AS-007	<a href="#">Drax Power Limited</a> Compulsory Acquisition Schedule Rev 02 - Accepted at the discretion of the Examining Authority
AS-008	<a href="#">Drax Power Limited</a> 2.5A Two Unit Option Indicative Plant Layout Sheets 1 and 8 Rev 02 - Accepted at the discretion of the Examining Authority
AS-009	<a href="#">Drax Power Limited</a> Indicative Works Associated with Unit X Sheets 1, 15 and 17 Rev 02 - Accepted at the discretion of the Examining Authority
AS-010	<a href="#">Drax Power Limited</a> Land Plans Rev 02 - Accepted at the discretion of the Examining Authority
AS-011	<a href="#">Drax Power Limited</a> Work Plans Sheets 1, 24 and 26 Rev 02 - Accepted at the discretion of the Examining Authority
AS-012	<a href="#">Drax Power Limited</a> Draft Development Consent Order - Clean - Accepted at the discretion of the Examining Authority
AS-013	<a href="#">Drax Power Limited</a> Draft Development Consent Order (Revision 1) - Red line of changes - Accepted at the discretion of the Examining Authority
AS-014	<a href="#">Drax Power Limited</a> Flood Risk Assessment Rev 02 - Accepted at the discretion of the Examining Authority
AS-015	<a href="#">Drax Power Limited</a> Habitats Regulations Assessment Report Appendix 3 - Accepted at the discretion of the Examining Authority
AS-016	<a href="#">Drax Power Limited</a> Application Guide Rev 004 - Accepted at the discretion of the Examining Authority
AS-117	<a href="#">Ministry of Defence</a> Accepted at the discretion of the Examining Authority
AS-118	<a href="#">SGN</a> Letter from Roger Crane dated 25 July 2018 - Accepted at the discretion of the Examining Authority
AS-119	<a href="#">Open letter to The Secretary of State</a> Open letter from Biofuelwatch and other signatories – Accepted at the discretion of the Examining Authority
AS-123	<a href="#">Duncan Law, Biofuelwatch</a> Response to Rule 6 Letter
AS-124	<a href="#">Sam Hunter Jones, ClientEarth</a> Response to Rule 6 Letter



AS-125	<a href="#">Richard Watson, I.D. Watson Farmers</a> Response to Rule 6 Letter
AS-126	<a href="#">Julian May</a> Response to Rule 6 Letter
AS-128	<a href="#">Drax Power Limited</a> 2.5B One Unit Option Indicative Plant Layout Sheets 1 and 8 Rev 02 - Accepted at the discretion of the Examining Authority
AS-129	<a href="#">Drax Power Limited</a> 6.2.9.10 Appendix 9.10 - Biodiversity Net Gain Assessment - Appendix 3 - Maps - Accepted at the discretion of the Examining Authority
AS-130	<a href="#">North Yorkshire County Council</a> Email from North Yorkshire County Council – Accepted at the discretion of the Examining Authority
AS-131	<a href="#">I.D Watson Farmers</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-132	<a href="#">National Grid</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-133	<a href="#">Client Earth</a> Additional Submission - Accepted at the discretion of the Examining Authority
AS-134	<a href="#">Drax Power Limited</a> Additional Submission - End of Examination Cover Letter - Accepted at the discretion of the Examining Authority
AS-135	<a href="#">Drax Power Limited</a> Additional Submission - 1.2 Application Guide (Final Submission) (Revision 014) - Accepted at the discretion of the Examining Authority
AS-136	<a href="#">Drax Power Limited</a> Additional Submission - 8.1.4 Statement of Common Ground with North Yorkshire County Council and Selby District Council (Revision 004) - Accepted at the discretion of the Examining Authority
AS-137	<a href="#">Drax Power Limited</a> Additional Submission - 8.2.10 Schedule of Changes (Final Submission) (Revision 001) - Accepted at the discretion of the Examining Authority
AS-138	<a href="#">Drax Power Limited</a> Additional Submission - 8.5.4 Schedule of Negotiations (Final Submission) (Revision 003) - Accepted at the discretion of the Examining Authority
AS-139	<a href="#">Drax Power Limited</a> Additional Submission - 8.5.26 Statement signed by Applicant and landowner with respect to planting on the Bingley Land - Accepted at the discretion of the Examining Authority
AS-140	<a href="#">Drax Power Limited</a> Additional Submission - Legal agreement pursuant to section 106 of the Town and Country Planning Act 1990 between the Applicant, Selby District Council and North Yorkshire County Council (Final Submission) (Revision 001) - Accepted at the discretion of the Examining Authority
AS-141	<a href="#">Biofuelwatch</a> Additional Submission - Accepted at the discretion of the Examining Authority

AS-142	<a href="#">National Grid</a> Additional Submission - Accepted at the discretion of the Examining Authority
<b>Events and Hearings</b>	
<b>Preliminary Meeting</b>	
EV-001	<a href="#">Drax Power Limited</a> Drax Open Floor Hearing Notice
EV-002	<a href="#">Recording of Preliminary Meeting Part 1</a>
EV-003	<a href="#">Recording of Preliminary Meeting Part 2</a>
EV-003a	<a href="#">Preliminary Meeting Note</a>
<b>Unaccompanied Site Inspections</b>	
EV-004	<a href="#">Note of Unaccompanied Site Inspection - 03 October 2018</a>
<b>Accompanied Site Visits and Hearings</b>	
EV-005	<a href="#">Recording of Open Floor Hearing</a>
EV-006	<a href="#">Hearing Notice - 04 December 2018 to 06 December 2018</a> Hearing Notice for Open Floor Hearing 2, Issue Specific Hearing 1, Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1
EV-007	<a href="#">Agenda for Open Floor Hearing 2</a> Open Floor Hearing 2 Agenda
EV-008	<a href="#">Agenda For Issue Specific Hearings and Compulsory Acquisition Hearing</a> Issue Specific Hearing 1, Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 Agenda
EV-009	<a href="#">Recording of Open Floor Hearing 2 (OFH2) - 04 December 2018</a>
EV-010	<a href="#">Recording of Issue Specific Hearing 1 (ISH1) - AM Session Part 1 - 05 December 2018</a>
EV-011	<a href="#">Recording of Issue Specific Hearing 1 (ISH1) - AM Session Part 2 - 05 December 2018</a>
EV-012	<a href="#">Recording of Issue Specific Hearing 1 (ISH1) - PM Session Part 1 - 05 December 2018</a>
EV-013	<a href="#">Recording of Issue Specific Hearing 1 (ISH1) - PM Session Part 2 - 05 December 2018</a>
EV-014	<a href="#">Recording of Issue Specific Hearing 2 (ISH2) - 06 December 2018</a>
EV-015	<a href="#">Recording of Compulsory Acquisition Hearing 1 (CAH1) - 06 December 2018</a>
EV-016	<a href="#">Hearing Action Points List - Arising from the Open Floor Hearing, Issue Specific Hearings and Compulsory Acquisition Hearings on 4, 5 and 6 December</a>
EV-017	<a href="#">Agenda for Issue Specific Hearing 2 (ISH2)</a>
EV-018	<a href="#">Recording of Compulsory Acquisition Hearing 2 (CAH2) - 12 February 2019</a>
EV-019	<a href="#">Recording of Open Floor Hearing 3 (OFH3) - 12 February 2019</a>
EV-020	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) - Session 1 - 12 February 2019</a>
EV-021	<a href="#">Recording of Issue Specific Hearing 3 (ISH3) - Session 2 - 12 February 2019</a>
EV-022	<a href="#">Action Points from Issue Specific Hearing 3 (ISH3)</a>

## Representations

### Deadline 1 – 18 October 2018

- Comments on updated application documents
- Comments on Relevant Representations (RR)
- Summaries of all RRs exceeding 1500 words
- Statements of Common Ground (SoCG) requested by the ExA
- Post hearing submissions including written submissions of oral case
- Notification by Statutory Parties of their wish to be considered as an IP by the ExA
- Notification of wish to make oral representations at an Issue Specific Hearing (ISH)
- Notification of wish to speak at any Open Floor Hearing (OFH)
- Notification of wish to speak at any Compulsory Acquisition Hearing (CAH)
- Notification of wish to attend an Accompanied Site Inspection (ASI) including suggested locations and justifications
- Notification of wish to have future correspondence received electronically
- Comments on any additional information/submissions received
- Responses to any further information requested by the ExA for this Deadline

REP1-001	<a href="#">Drax Power Limited</a> Deadline 1 Submission - Cover Letter
REP1-002	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 1.2 Application Guide (Revision 005)
REP1-003	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.1.1 Statement of Common Ground with Historic England (Revision 001)
REP1-004	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.1.2 Statement of Common Ground with Natural England (Revision 001)
REP1-005	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.1.3 Statement of Common Ground with East Riding of Yorkshire Council (Revision 001)
REP1-006	<a href="#">Drax Power Limited</a> 8.1.4 Statement of Common Ground with North Yorkshire County Council and Selby District Council (Draft) (Revision 001)
REP1-007	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.2.1 Schedule of Changes (Revision 001)
REP1-008	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.3.1 Errata Environmental Statement (Chapters 7, 8 and 11) (Revision 001)
REP1-009	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.4.1 Revised Viewpoints and Additional Photomontage (Revision 001)
REP1-010	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.4.2 Supplemental Environmental Information - Breeding Bird Survey (Revision 001)
REP1-011	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.4.3 Supplemental Environmental Information - Reptile Survey (Revision 001)
REP1-012	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.4.5 Electric and Magnetic Fields (EMF) Assessment Report (Revision 001)

REP1-013	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.5.1 Applicant's Responses to Relevant Representations (Revision 001)
REP1-014	<a href="#">Drax Power Limited</a> Deadline 1 Submission - 8.5.2 Accompanied Site Inspection Suggested Locations and Justifications (Revision 001)
REP1-015	<a href="#">Historic England</a> Deadline 1 Submission
REP1-016	<a href="#">Friends of the Earth</a> Deadline 1 Submission
<b>Deadline 2 – 08 November 2018</b> <ul style="list-style-type: none"> <li>• Written Representations (WR's)</li> <li>• Summaries of all WR's exceeding 1500 words</li> <li>• Comments on SoCG's</li> <li>• Local Impact Reports (LIR) from any local authorities</li> <li>• Responses to ExA's Written Questions</li> <li>• Updated Compulsory Acquisition Schedule (Annex to Written Questions)</li> <li>• Draft itinerary for Accompanied Site Inspection</li> <li>• Comments on any additional information/submissions received by D1</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	
REP2-001	<a href="#">Biofuelwatch</a> Deadline 2 Submission - Written Representation
REP2-002	<a href="#">ClientEarth</a> Deadline 2 Submission - Written Representation and Response to the Examining Authority's Written Questions
REP2-003	<a href="#">Drax Power Limited</a> Deadline 2 Submission - Cover Letter
REP2-004	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 1.2 Application Guide (Revision 006)
REP2-005	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.1 Site Location Plan (Revision 02)
REP2-006	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.2 Land Plans (Revision 03)
REP2-007	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.3A Works Plans (Revision 03)
REP2-008	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.3B Indicative Works Associated with Unit X (Revision 03)
REP2-009	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.3C Indicative Works Associated with Unit Y (Revision 02)
REP2-010	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.4 Access and Rights of Way Plans (Revision 01)
REP2-011	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.5A Two Unit Option Indicative Plant Layout (Revision 03)
REP2-012	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.5B One Unit Option Indicative Plant Layout (Revision 03)
REP2-013	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 2.6C Indicative Above Ground Gas Installation Elevations (Revision 02)

REP2-014	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 3.1 Draft Development Consent Order (Clean) Revision 2
REP2-015	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 3.1 Draft Development Consent Order Rev 2 - Red Line of Changes Between Revision 1 and Revision 2
REP2-016	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 4.2 Funding Statement (Revision 002)
REP2-017	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 4.3 Book of Reference – Clean (Revision 004)
REP2-018	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 4.3 Book of Reference - Track Changes - (Revision 004)
REP2-019	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 4.4 Compulsory Acquisition Schedule (Revision 003)
REP2-020	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 5.8 Other Consents and Licenses (Revision 002)
REP2-021	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 6.2.5.1 Appendix 5.1 - Outline Construction Worker Travel Plan (Revision 002)
REP2-022	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 6.2.5.2 Appendix 5.2 - Outline Construction Traffic Management Plan (Revision 002)
REP2-023	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 6.2.9.10 Appendix 9.10 - Biodiversity Net Gain Assessment (Revision 002)
REP2-024	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 6.4 Environmental Statement Commitments Register (Revision 002)
REP2-025	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 6.5 Outline Construction Environmental Management Plan (Revision 002)
REP2-026	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 6.7 Outline Landscape and Biodiversity Strategy (Revision 002)
REP2-027	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 6.8 Flood Risk Assessment (Revision 003)
REP2-028	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.1.6 Statement of Common Ground with Highways England (Draft) (Revision 001)
REP2-029	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.1.8 Statement of Common Ground with the Health and Safety Executive (Revision 001)
REP2-030	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.2.2 Schedule of Changes (Revision 001)
REP2-031	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.4.4 Supplemental Environmental Information - Bat Activity Survey (Revision 001)
REP2-032	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.4.6 Outline Public Rights of Way Management Plan (Revision 001)

REP2-033	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.4.7 Landscape and Visual Amenity Effects – Appropriateness of Proposed Mitigation (Revision 001)
REP2-034	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.5.2 Accompanied Site Inspection - Suggested Locations and Justifications (Revision 002)
REP2-035	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.5.3 Applicant's Response to Written Questions (Revision 001)
REP2-036	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.5.4 Schedule of Negotiations (Revision 001)
REP2-037	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.5.5 Removal of Stage 0 Mitigation Review (Revision 001)
REP2-038	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.5.6 Plans Identifying the Additional Land (Revision 001)
REP2-039	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.5.7 Additional Land Application (Revision 001)
REP2-040	<a href="#">Drax Power Limited</a> Deadline 2 Submission - 8.5.8 Supplemental Statement of Reasons in Relation to Additional Land (Revision 001)
REP2-041	<a href="#">Environment Agency</a> Deadline 2 Submission - Written Representation
REP2-042	<a href="#">Environment Agency</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-043	<a href="#">Julian M</a> Deadline 2 Submission - Written Representation
REP2-044	<a href="#">National Grid Electricity Transmission plc &amp; National Grid Gas plc</a> Deadline 2 Submission - Written Representation and Response to the Examining Authority's Written Questions
REP2-045	<a href="#">Natural England</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-046	<a href="#">Yorkshire Wildlife Trust</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions
REP2-047	<a href="#">North Yorkshire County Council &amp; Selby District Council</a> Deadline 2 Submission - Response to the Examining Authority's Written Questions and Local Impact Report - Late Deadline 2 Submission accepted at the discretion of the Examining Authority

### **Deadline 3 – 22 November 2018**

- Comments on WR's
- Comments on LIR's
- Comments on responses to the ExA's Written Questions
- Any revised/updated SoCG (if any)
- The Applicant's revised draft Development Consent Order (dDCO)
- Requests to attend Accompanied Site Inspection
- Comments on any additional information/submissions received by D2
- Responses to any further information requested by the ExA for this Deadline

REP3-001	<a href="#">Drax Power Limited</a> Deadline 3 Submission - Cover Letter
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REP3-002	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 1.2 Application Guide (Revision 007)
REP3-003	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 1.6 Glossary (Revision 002)
REP3-004	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 2.5A Two Unit Option Indicative Plant Layout (Revision 04)
REP3-005	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 2.5B Single Unit Option Indicative Plant Layout (Revision 04)
REP3-006	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 2.6A Indicative Plant Elevations (Revision 02)
REP3-007	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 3.1 Draft Development Consent Order (Clean) (Revision 3)
REP3-008	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 3.1 Draft Development Consent Order Red Line of Changes Between Revision 2 and Revision 3
REP3-009	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 3.2 Explanatory Memorandum (Revision 1)
REP3-010	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 4.1 Statement of Reasons (Revision 002)
REP3-011	<a href="#">Drax Power Limited</a> Deadline 3 Submission - Book of Reference – (Clean) (Revision 005)
REP3-012	<a href="#">Drax Power Limited</a> Deadline 3 Submission - Book of Reference - (Track Changes) (Revision 005)
REP3-013	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 4.4 Compulsory Acquisition Schedule (Revision 004)
REP3-014	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 5.6 Combined Heat and Power Statement (Revision 002)
REP3-015	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 5.7 Carbon Capture Readiness Statement (Revision 002)
REP3-016	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 5.8 Other Consents and Licenses (Revision 003)
REP3-017	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 6.6 Habitats Regulations Assessment Report (Revision 002)
REP3-018	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.1.9 Statement of Common Ground between Drax Power Limited and Selby Area Internal Drainage Board (Revision 001)
REP3-019	<a href="#">Drax Power Limited</a> Deadline 3 Submission - Statement of Common Ground between Drax Power Limited and Newland Parish Council (Revision 001)
REP3-020	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.2.3 Schedule of Changes (Revision 001)
REP3-021	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.4.1 Revised Viewpoints and Additional Photomontage (Revision 002)

REP3-022	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.4.8 Assessment of Non-Material Amendments to Proposed Scheme (Revision 001)
REP3-023	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.4.9 Update to the Cumulative Assessment (Revision 001)
REP3-024	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.5.9 Responses to Written Representations (Revision 001)
REP3-025	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.5.10 Responses to Other Parties' Responses to the Examining Authority's Written Questions (Revision 001)
REP3-026	<a href="#">Drax Power Limited</a> Deadline 3 Submission - 8.5.11 Response to the Local Impact Report (Revision 001)
REP3-027	<a href="#">Julian May</a> Deadline 3 Submission - Comments on Applicant's Response to Examining Authority's Written Questions
<b>Deadline 4 - 13 December 2018</b> <ul style="list-style-type: none"> <li>• Post hearing submissions including written submissions of oral case</li> <li>• Comments on any revised/updated SoCG (if any)</li> <li>• Comments on the Applicant's revised dDCO</li> <li>• Comments on any additional information/submissions received by D3</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	
REP4-001	<a href="#">Drax Power Limited</a> Deadline 4 Submission - Cover Letter
REP4-002	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 2.4 Access and Rights of Way Plans (Revision 01)
REP4-003	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 2.3A Works Plans (Revision 04)
REP4-004	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 1.2 Application guide (Revision 008)
REP4-005	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 6.5 Outline Construction Environmental Management Plan (Revision 002)
REP4-006	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 8.2.4 Schedule of Changes (Revision 001)
REP4-007	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 8.1.5 Statement of Common Ground with Environment Agency (Revision 001)
REP4-008	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 8.1.4 Statement of Common Ground with North Yorkshire County Council and Selby County Council (Revision 002)
REP4-009	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 8.1.7 Statement of Common Ground with Yorkshire Wildlife Trust (Revision 001)
REP4-010	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 8.5.14 Written Summary of Applicants Oral Case at Compulsory Acquisition Hearing (Revision 001)



REP4-011	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 8.5.13 Written Summary of Applicants Oral Case at Issue Specific Hearing (DCO) (Revision 001)
REP4-012	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 8.1.12 Written Summary of Applicants Oral Case at Issue Specific Hearing (Environmental Matters) (Revision 001)
REP4-013	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 6.2.5.1 Appendix 5.1 - Outline Construction Worker Travel Plan (Revision 003)
REP4-014	<a href="#">Drax Power Limited</a> Deadline 4 Submission - 6.2.5.2 Appendix 5.2 - Outline Construction Traffic Management Plan (Revision 003)
REP4-015	<a href="#">WSP on behalf of Drax Power Limited</a> Deadline 4 Submission - Covering Email
REP4-016	<a href="#">Martin Woolley Landscape Architects on behalf of North Yorkshire County Council</a> Deadline 4 Submission - Draft mitigation strategy
REP4-017	<a href="#">Client Earth</a> Deadline 4 Submission - Post-Hearing Submission and Response to Deadline 3 Submissions
REP4-018	<a href="#">Friends of the Earth Selby</a> Deadline 4 Submission - Oral representation and comments on Drax's response
REP4-019	<a href="#">North Yorkshire County Council</a> Deadline 4 Submission - Local Authorities Draft DCO - The Authorities amendments
REP4-020	<a href="#">North Yorkshire County Council</a> Deadline 4 Submission - Letter from NYCC to Drax officers referred to in point 9, Appendix 1, Statement of Common Ground
REP4-021	<a href="#">North Yorkshire County Council</a> Deadline 4 Submission - Letter from NYCC to Drax officers referred to in point 25, Appendix 1, Statement of Common Ground
REP4-022	<a href="#">James Hewitt</a> Deadline 4 Submission - Accepted at the discretion of the Examining Authority
REP4-023	<a href="#">Cath Kibbler</a> Deadline 4 Submission - Accepted at the discretion of the Examining Authority
REP4-024	REFERENCE NOT IN USE
REP4-025	<a href="#">North Yorkshire County Council</a> Deadline 4 Submission - Cover Email - Pre hearing information
REP4-026	<a href="#">North Yorkshire County Council</a> Deadline 4 Submission - Cover Email
<b>Deadline 5 - 09 January 2019</b> <ul style="list-style-type: none"> <li>Any revised/updated SoCG (if any)</li> <li>The Applicant's revised dDCO</li> <li>Comments on any additional information/submissions received by D4</li> <li>Responses to any further information requested by the ExA for this Deadline</li> </ul>	
REP5-001	<a href="#">Drax Power Limited</a> Deadline 5 Submission - Cover Email

REP5-002	<a href="#">Drax Power Limited</a> Deadline 5 Submission - Cover Letter
REP5-003	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 1.2 Application Guide (Revision 009)
REP5-004	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 2.2 Land Plans (Revision 03)
REP5-005	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 2.5A Two Unit Option Indicative Plant Layout (Revision 05)
REP5-006	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 2.5B Single Unit Option Indicative Plant Layout (Revision 05)
REP5-007	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 2.6A Indicative Plant Elevations (Revision 03)
REP5-008	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 2.6B Indicative Gas Receiving Facility and Gas Compressor Elevations (Revision 02)
REP5-009	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 3.1 Draft Development Consent Order Red Line of Changes Between Deadline 3 Version and Deadline 5 Version (Track Changes) (Revision 4)
REP5-010	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 3.1 Development Consent Order - PINS submission version
REP5-011	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 3.1 Development Consent Order (Clean) (Revision 4)
REP5-012	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 3.2 Explanatory Memorandum (Revision 2)
REP5-013	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 4.3 Book of Reference (Clean) (Revision 006)
REP5-014	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 4.3 Book of Reference (Track Changes) (Revision 006)
REP5-015	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 4.4 Compulsory Acquisition Schedule (Revision 005)
REP5-016	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 8.2.5 Schedule of Changes (Revision 001)
REP5-017	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 8.4.1 Revised Viewpoints and Additional Photomontage (Revision 003)
REP5-018	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 8.4.6 Outline Public Rights of Way Management Plan (Revision 002)
REP5-019	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 8.4.10 Air Quality Technical Note in Relation to Changes in Stack Height (Revision 001)
REP5-020	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 8.5.15 Applicant's Response to Other Parties' Submissions at Deadline 4 (Revision 001)

REP5-021	<a href="#">Drax Power Limited</a> Deadline 5 Submission - 8.5.16 Note on Substantial Weight to be Given to Need and Application of Tests Under S104 (Revision 001)
REP5-022	<a href="#">Client Earth</a> Deadline 5 Submission - Comments on any additional information received by Deadline 4
REP5-023	<a href="#">Client Earth</a> Deadline 5 Submission - Comments on any additional information received by Deadline 4
REP5-024	<a href="#">Julian May</a> Deadline 5 Submission - Comments on any additional information received by Deadline 4
<b>Deadline 6 - 30 January 2019</b> <ul style="list-style-type: none"> <li>• Responses to the ExA's further Written Questions (if required)</li> <li>• Comments on any revised/updated SoCG (if any)</li> <li>• Comments on the Applicant's revised dDCO</li> <li>• Comments on any additional information/submissions received by D5</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	
REP6-001	<a href="#">Drax Power Limited</a> Deadline 6 Submission - Cover Letter
REP6-002	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 1.2 Application Guide (Revision 010)
REP6-003	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 6.1.3 Site and Project Description (Revision 002)
REP6-004	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 6.2.9.10 Appendix 9.10 - Biodiversity Net Gain Assessment (Revision 003)
REP6-005	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 6.5 Outline Construction Environmental Management Plan (Revision 004)
REP6-006	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 6.6 Habitats Regulations Assessment Report (Revision 003)
REP6-007	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 6.6 Habitats Regulations Assessment Report Appendix 1
REP6-008	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 6.6 Habitats Regulations Assessment Report Appendix 2
REP6-009	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 6.7 Outline Landscape and Biodiversity Strategy (Revision 003)
REP6-010	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 8.2.6 Schedule of Changes (Revision 001)
REP6-011	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 8.4.1 Revised Viewpoint Additional Photomontage (Revision 004)
REP6-012	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 8.4.11 Applicant's Response to Off-Site Mitigation Strategy (Revision 001)

REP6-013	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 8.5.17 Applicant's Responses to Examining Authority's Further Written Questions (Revision 001)
REP6-014	<a href="#">Drax Power Limited</a> Deadline 6 Submission - 8.5.18 Applicant's Response to Deadline 5 Submission by Julian May (Revision 001)
REP6-015	<a href="#">Pinsent Masons on behalf of Drax Power Ltd</a> Deadline 6 Submission - Response to Client Earth Letter Dated 9 January 2019
REP6-016	<a href="#">North York County Council and Selby District Council</a> Deadline 6 Submission - Response to Examining Authority's Further Written Questions
REP6-017	<a href="#">North Yorkshire Fire and Rescue Service</a> Deadline 6 Submission - Response to Drax Power Ltd for an Order Granting Development Consent
REP6-018	<a href="#">Environment Agency</a> Deadline 6 Submission - Response to the Examining Authority's Further Written Questions
REP6-019	<a href="#">North Yorkshire County Council</a> Deadline 6 Submission - Late Submission - Local Authority Response - Accepted at the discretion of the Examining Authority
REP6-020	<a href="#">National Grid</a> Deadline 6 Submission - Late submission accepted at the discretion of the Examining Authority - Updated on 08 February 2019
REP6-021	<a href="#">Client Earth</a> Deadline 6 Submission - Response to Examining Authority's Further Written Question ANC 2.5 and the Applicant's Deadline 5 submission
REP6-022	<a href="#">National Grid</a> Deadline 6 Submission - Response to Examining Authority's Further Written Question ANC 2.3
REP6-023	<a href="#">Natural England</a> Deadline 6 Submission - Late Submission - Response to Examining Authority's Further Written Questions - Accepted at the discretion of the Examining
<b>Deadline 7 - 20 February 2019</b> <ul style="list-style-type: none"> <li>• Post hearing submissions including written submissions of oral case (if required)</li> <li>• Comments on the ExA's further Written Questions (if required)</li> <li>• Any revised/updated SoCG (if any)</li> <li>• The Applicant's revised dDCO</li> <li>• Comments on any additional information/submissions received by D6</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	
REP7-001	<a href="#">Drax Power Limited</a> Deadline 7 Submission - Cover Letter
REP7-002	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 1.2 Application Guide (Revision 011)
REP7-003	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 3.1 Draft Development Consent Order (Clean) (Revision 5)
REP7-004	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 3.1 Draft Development Consent Order Red Line of Changes Between D5 Version and D7 Version (Track Changes) (Revision 5)
REP7-005	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 5.7 Carbon Capture Readiness Statement (Revision 003)

REP7-006	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 6.4 Environmental Statement Commitments Register (Revision 003)
REP7-007	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 6.7 Outline Landscape and Biodiversity Strategy (Revision 004)
REP7-008	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.1.4 Statement of Common Ground between Drax Power Limited and North Yorkshire County Council and Selby District Council (third draft) (Revision 003)
REP7-009	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.1.5 Statement of Common Ground between Drax Power Limited and the Environment Agency (second draft) (Revision 002)
REP7-010	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.1.6 Statement of Common Ground between Drax Power Limited and Highways England (second draft) (Revision 002)
REP7-011	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.1.7 Statement of Common Ground between Drax Power Limited and Yorkshire Wildlife Trust (second draft) (Revision 002)
REP7-012	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.2.7 Schedule of Changes (Revision 001)
REP7-013	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.4.6 Outline Public Rights of Way Management Plan (Revision 003)
REP7-014	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.5.19 Written Summary of Drax Power Limited's ("The Applicant") Oral Case put at the Compulsory Acquisition Hearing - 12 February 2019 (Revision 001)
REP7-015	<a href="#">Drax Power Limited</a> Deadline 7 Submission - 8.5.20 Written Summary of Drax Power Limited's (The Applicant") Oral Case put at the Issue Specific Hearing - 12 February 2019 (Revision 001)
REP7-016	<a href="#">Client Earth</a> Deadline 7 Submission - Letter to the Examining Authority regarding the Applicant's post-hearing submission in respect of Issue Specific Hearing 1
REP7-017	<a href="#">North Yorkshire County Council &amp; Selby District Council</a> Deadline 7 Submission - Response to Deadline 6 Submissions
REP7-018	<a href="#">Drax Power Limited</a> Deadline 7 Submission - Late Submission - Applicant's Response to ClientEarth's Deadline 6 Submission - Accepted at the Discretion of the Examining Authority (Revision 001)
<b>Deadline 8 - 21 March 2019</b> <ul style="list-style-type: none"> <li>• Comments on the RIES</li> <li>• Comments on the ExA's proposed schedule of changes to the dDCO (if required)</li> <li>• Final SoCGs</li> <li>• Applicant's final Compulsory Acquisition Schedule</li> <li>• Final updated Book of Reference</li> <li>• Comments on any additional information/submissions received by D7</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	
REP8-001	<a href="#">Drax Power Limited</a> Deadline 8 Submission - Cover Letter

REP8-002	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 1.2 Application Guide (Revision 012)
REP8-003	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 4.3 Book of Reference (Clean) (Revision 007)
REP8-004	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 4.3 Book of Reference (Tracked Changes) (Revision 007)
REP8-005	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 4.4 Compulsory Acquisition Schedule (Revision 006)
REP8-006	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 6.5 Outline Construction Environmental Management Plan (Revision 005)
REP8-007	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 8.1.5 Statement of Common Ground between Drax Power Limited and the Environment Agency (Updated draft) (Revision 003)
REP8-008	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 8.1.6 Statement of Common Ground between Drax Power Limited and Highways England (Updated draft) (Revision 003)
REP8-009	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 8.1.7 Statement of Common Ground between Drax Power Limited and Yorkshire Wildlife Trust (Final) (Revision 003)
REP8-010	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 8.2.8 Schedule of Changes (Revision 001)
REP8-011	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 8.4.12 Applicant's Response to North Yorkshire County Council's and Selby District Council's Position on Landscaping (Revision 001)
REP8-012	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 8.5.4 Schedule of Negotiations (Revision 002)
REP8-013	<a href="#">Drax Power Limited</a> Deadline 8 Submission - 8.5.22 Applicant's Response to the Examining Authority's Proposed Schedule of Changes to the Draft Development Consent Order (Revision 001)
REP8-014	<a href="#">Drax Power Limited</a> Deadline 8 Submission - Response to ClientEarth Letter dated 20 February
REP8-015	<a href="#">North Yorkshire County Council</a> Deadline 8 Submission - Response to further information requested by the ExA
REP8-016	<a href="#">Selby District Council</a> Deadline 8 Submission - Response to Further information requested by the ExA
<b>Deadline 9 - 28 March 2019</b> <ul style="list-style-type: none"> <li>• Applicant's final DCO to be submitted in the SI template with the SI template validation report</li> <li>• Final updated Guide to the Application</li> <li>• Comments on any additional information/submissions received by D8</li> <li>• Responses to any further information requested by the ExA for this Deadline</li> </ul>	
REP9-001	<a href="#">Drax Power Limited</a> Deadline 9 Submission - Cover Email
REP9-002	<a href="#">Drax Power Limited</a> Deadline 9 Submission - Cover Letter
REP9-003	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 1.2 Application Guide (Revision 013)



REP9-004	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 3.1 Draft Development Consent Order (Clean) (Revision 6)
REP9-005	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 3.1 Draft Development Consent Order Red Line Changes Between Deadline 7 Version and Deadline 9 Version (Revision 6)
REP9-006	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 3.2 Explanatory Memorandum (Revision 3)
REP9-007	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 6.2.9.10 Environmental Statement – Volume 2 – Appendix 9.10 Biodiversity Net Gain Assessment (Revision 004)
REP9-008	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 6.7 Outline Landscape and Biodiversity Strategy (Revision 005)
REP9-009	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 8.1.5 Statement of Common Ground between Drax Power Limited and the Environment Agency (Final) (Revision 004)
REP9-010	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 8.1.6 Statement of Common Ground between Drax Power Limited and Highways England (Final) (Revision 004)
REP9-011	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 8.2.9 Schedule of Changes (Revision 001)
REP9-012	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 8.4.12 Applicant's Response to North Yorkshire County Council's and Selby District Council's Position on Landscaping (Revision 002)
REP9-013	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 8.5.23 Note to Confirm Compliance with the Revised National Planning Policy Framework (2018 and 2019)
REP9-014	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 8.5.24 Closing Submissions (Revision 001)
REP9-015	<a href="#">Drax Power Limited</a> Deadline 9 Submission - DCO Validation - Drax Development Consent Order PINS submission version - Deadline 9 March 2019
REP9-016	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 9.1 Drax Re-power Rule 17 Cover Letter
REP9-017	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 9.2 Applicant's Response to Request for Further Information (Rule 17 Letter) (Revision 001)
REP9-018	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 9.3 Development Consent Order relating to Unit X only (Revision 1)
REP9-019	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 9.4 Book of Reference for the Rule 17 Letter (Revision 001)
REP9-020	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 9.5 Land Plans for the Rule 17 Letter (Revision 01)
REP9-021	<a href="#">Drax Power Limited</a> Deadline 9 Submission - 9.6 Draft Development Consent Order – Proposed Scheme compared with Unit X (Revision 1)

REP9-022	<a href="#">Drax Power Limited</a> Deadline 9 Submission - DCO Validation - Drax Development Consent Order PINS submission version relating to UNIT X ONLY - Deadline 9 March 2019
REP9-023	<a href="#">Client Earth</a> Deadline 9 Submission - Response to further information requested by the Examining Authority
REP9-024	<a href="#">Julian May</a> Deadline 9 Submission
REP9-025	<a href="#">Natural England</a> Deadline 9 Submission
<b>Other Documents</b>	
OD-001	<a href="#">Drax Power Limited</a> Certificates of Compliance - Accepted at the discretion of the Examining Authority
OD-002	<a href="#">Drax Power Limited</a> Book of Reference Rev 003 - Tracked Changes - Accepted at the discretion of the Examining Authority
OD-003	<a href="#">Drax Power Limited</a> Certificates of Compliance Cover Letter - Accepted at the discretion of the Examining Authority
OD-004	<a href="#">Drax Power Limited</a> Book of Reference Rev 003 - Schedule of Changes - Accepted at the discretion of the Examining Authority
OD-005	<a href="#">Drax Power Limited</a> Book of Reference Rev 003 - Clean - Accepted at the discretion of the Examining Authority
OD-006	<a href="#">Regulation 32 Transboundary Screening</a>



## **APPENDIX C: LIST OF ABBREVIATIONS**

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AEL	Achievable Emission Level
AEoI	Adverse Effects on the Integrity
AGI	Above Ground Gas Installation
AGL	Above Ground Level
AILs	Abnormal Indivisible Loads
ALC	Agriculture Land Classification
AOD	Above Ordnance Datum
AONB	Area of Outstanding Natural Beauty
AP	Affected Person
APIS	Air Pollution Information System
AQMAs	Air Quality Management Areas
ASI	Accompanied Site Inspection
BAT	Best Available Technique
BEIS	Department for Business, Energy and Industrial Strategy
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BoR	Book of Reference
BREEAM	Building Research Establishment Environmental Assessment Method
BU	Biodiversity Unit
BRefs	European BAT reference documents
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CA Regulations	the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended)
CCA2008	Climate Change Act 2008
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Readiness
CCS	Carbon Capture Storage
CE	ClientEarth
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CO <sub>2</sub>	Carbon Dioxide
CO <sub>2</sub> e	Carbon Dioxide equivalent
CO	Carbon Monoxide
CoPA	Control of Pollution Act 1974
CRT	Canal & River Trust
CTMP	Construction Traffic Management Plan
CWTP	Construction Worker Travel Plan
D	Examination Deadline
DCLG/MHCLG	Ministry for Housing, Communities and Local Government

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
DCLG CA Guidance	Guidance Related to Procedures for the Compulsory Acquisition of Land 2013
DECC	Department for Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
Design Amendment	Design Changes to the Application, accepted as a non-material change to the Application
DFID	Department for International Development
draft DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
EA	Environment Agency
EA1995	Environment Act 1995
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EL	Examination Library
ELVs	Emission Limit Values
EM	Explanatory Memorandum
EMF	Electric and Magnetic Field
EN-1	Overarching National Policy Statement for Energy
EN-2	Fossil Fuel and Electricity Generating Infrastructure
EN-3	Renewable Energy Infrastructure
EN-4	Gas supply infrastructure and gas and oil pipelines
EN-5	Electricity networks infrastructure
EP	Environmental Permit
EP Regulations	The Environmental Permitting (England and Wales) Regulations
EPA	Environmental Protection Act
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ERYC	East Riding of Yorkshire Council

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
ES	Environmental Statement. For the purpose of this report the ES mean: - The documents submitted at the outset of the Application [APP-069] to [APP-131]; - The supplemental environmental and engineering information; and - The updated documents.
EU	European Union
EUWA	The European Union (Withdrawal) Act 2018
ExA	Examining Authority
FofE	Friends of the Earth
FRA	Flood Risk Assessment
FS	Funding Statement
FWQ	Further Written Question
GHG	Greenhouse Gas
GIS	Gas Insulated Switchgear
GRF	Gas Receiving Facility
Guidance 2013	DCLG Guidance on associated development applications for major infrastructure projects'
ha	hectare
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HCl	Hydrogen Chloride
HE	Historic England
HGV	Heavy Goods Vehicle
HRA	Habitat Regulations Assessment
HRSG	Heat Recovery System Generator
HSC	Hazardous Substance Consent
HSE	Health and Safety Executive
HSRG	Heat Steam Recovery Generators
HwE	Highways England
IDB	Internal Drainage Board
IED	Industrial Emissions Directive
IP	Interested Party
ISH	Issue Specific Hearing
kV	Kilovolt
LBCA Act	The Planning (Listed Buildings and Conservation Areas) Act
LBS	Landscape and Biodiversity Strategy
LCP	Large Combustion Plant
LCT	Landscape Character Types
LILAs	Locally Important Landscape Areas
LIR	Local Impact Report
LNRs	Local Nature Reserves

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
LOAEL	Lowest Observable Adverse Effect
LPA	Local Planning Authority
LSE	Likely Significant Effects
LU	Linear Units
LVIA	Landscape and Visual Impact Assessment
mm	millimetre
MW	Megawatt
NCA	National Character Area
NE	Natural England
NGET	National Grid Electricity Transmission
NGG	National Grid Gas
NNRs	National Nature Reserves
NO <sub>2</sub>	Nitrogen Dioxide
NH <sub>3</sub>	Ammonia
NO <sub>x</sub>	Nitrous Oxide
NOEL	No Observed Effect Level
NPC	Newland Parish Council
NPPF	National Planning Policy Statement
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NSIP	Nationally Significant Infrastructure Project
NETS	National Electricity Transmission System
NYCC	North Yorkshire County Council
OCGT	Open Cycle Gas Turbine
Ofgem	Office of Gas and Electricity Markets
OFH	Open Floor Hearing
OHL	Overhead line
OP	Other Persons
OSMS	Off-site Mitigation Strategy
PA2008	Planning Act 2008 (as amended)
PCPA2004	Planning and Compulsory Purchase Act 2004
PARCA	Planning and Advanced Reservation of Capacity Agreement
PC	Process Contribution
PEC	Predicted Environmental Contribution
PIG	Pipeline Inspection Gauge
PLU	Primary Landscape Unit
PM	Preliminary Meeting
PM <sub>10</sub> / PM <sub>2.5</sub>	Particulate Matter of the defined dimension in micrometres (µm)
PPW	Permitted Preliminary Work
pRamsar	Proposed Ramsar site

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
PRoW	Public Right of Way
pSAC	Possible Special Area of Conservation
pSPA	Potential Special Protection Area
Ramsar	The Ramsar Convention on Wetlands
RIGS	Regionally Important Geological Sites
RIES	Report on Implications for European Sites
RR	Relevant Representation
S (s)	Section (of an Act)
SAC	Special Area of Conservation
SCI	Sites of Community Importance
SCR	Selective Catalytic Reduction
SDC	Selby District Council
SN	Statutory Nuisance
SNCB	Statutory Nature Conservation Body
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reason
SoS	Secretary of State
SP	Statutory Party
SPA	Special Protection Area
SPZ	Source Protection Zone
SSSI	Sites of Special Scientific Interest
SO <sub>2</sub>	Sulphur Dioxide
SWMP	Site Waste Management Plan
TCPA1990	Town and Country Planning Act 1990 (as amended)
the 2017 EIA Regulations	the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
the Air Quality Directive	Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe
The Applicant	Drax Power Limited
The Birds Directive	Council Directive 2009/147/EC on the conservation of wild birds
The CCR regulations	Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013
The Core Strategy	the Selby District Core Strategy Local Plan 2013
The DCLG CA Guidance	Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
The EIA Directive	Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment
The Framework	The National Planning Policy Framework
The Guidance	Planning Practice Guidance
The Habitats Directive	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
The Inspectorate	The Planning Inspectorate
The Inspectorate's website	Inspectorate's National Infrastructure Planning website
The Local Plan	Selby District Local Plan 2005
The Minerals Plan	North Yorkshire Minerals Local Plan 1997
The Proposed Development	The Application for Drax Power Limited
The Rule 6 Letter	Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010
The Waste Plan	North Yorkshire Waste Local Plan 2006
The Water Framework Directive	Council Directive 2000/60/EC (as amended) A framework for Community action in the field of water policy
TP	Temporary Possession
UEP	Updated Energy and Emissions Projections
UNFCCC	United Nations Framework Convention on Climate Change
Unit X	Work No 1
Unit X only	The Alternative Recommended DCO which involves works for Unit X, battery storage and the associated development
Unit Y	Work No 2
UK	United Kingdom
USI	Unaccompanied Site Inspection
VCA	Vehicles Certification Agency
WFD	Water Framework Directive
WQ	Written Question
WR	Written representation
YWT	Yorkshire Wildlife Trust
ZoI	Zone of Influence

## **APPENDIX D: THE RECOMMENDED DCO FOR THE PROPOSED DEVELOPMENT**



**201\* No.**

**INFRASTRUCTURE PLANNING**

**The Drax Power (Generating Stations) Order 201\***

*Made* - - - - - [\*\*\*] 201\*

*Coming into force* - - - [\*\*\*] 201\*

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An application under section 37 of the Planning Act 2008(a) (“the 2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b).

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(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20). Part 7 amended by S.I. 2017/16.

(b) S.I. 2010/103, amended by S.I. 2012/635.

The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127 of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Drax Power (Generating Stations) Order 201\* and comes into force on [\*\*\*] 201\*

#### **Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2008 Act” means the Planning Act 2008(h);

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(i);

“access and rights of way plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

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(a) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/834, S.I. 2018/942.

(b) 1961 c.33.

(c) 1965 c.56.

(d) 1980 c.66.

(e) 1981 c.66.

(f) 1990 c.8.

(g) 1991 c.22.

(h) 2008 c.29.

(i) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755 and S.I. 2017/572.

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

“application guide” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) to this Order which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carbon capture readiness reserve space” means the area comprised in Work No. 10 shown on the works plans;

“carriageway” has the same meaning as in the 1980 Act;

“the CHP statement” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the CHP statement for the purposes of this Order;

“commence” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the carrying out of the permitted preliminary works (except where stated to the contrary) and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of each of numbered works 1A and 2A (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions, in relation to numbered works 1A and 2A, are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“date of Work No. 1A full commissioning” means the date on which the commissioning of numbered work 1A is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 4(2) of Schedule 2 to this Order;

“date of Work No. 2A full commissioning” means the date on which the commissioning of numbered work 2A is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 4(3) of Schedule 2 to this Order;

“Drax Power Limited” means Drax Power Limited (Company No. 04883589) whose registered office is at Drax Power Station, Selby, North Yorkshire YO8 8PH;

“Electricity Acts” means the Electric Lighting Act 1909(a), the Electricity (Supply) Act 1919(b), and the Electricity Act 1989(c);

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the environmental statement” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the flood risk assessment” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each work number on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that any such activities do not give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“this Order” means the Drax Power (Generating Stations) Order 201\*;

“Order land” means the land delineated and marked as such on the land plans;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“the outline construction environmental management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“the outline construction traffic management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is

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(a) 1909 c.34 as repealed by the Electricity Act 1989.

(b) 1919 c.100 as repealed by the Electricity Act 1989.

(c) 1989 c.29. Part 1 has been amended by S.I. 2017/493 and Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c.27) and sections 136 and 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20). Section 7A(10D) and Section 56FB(2) have both been amended by the Smart Meters Act 2018. Section 64 has been amended by article 24(c) of the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506), section 108 of, paragraphs 24 and 38 of part 2 of Schedule 6 to, and Schedule 8 to the Utilities Act 2000 (c.27), sections 44, 89, 102, 143, 147, 180 and 197 of, paragraphs 3 and 15 of Schedule 19 to, and Part 1 of Schedule 23 to, the Energy Act 2000 (c.20), section 79 of, and paragraph 5 of Schedule 8 to, the Climate Change Act 2008 (c.27), section 72 of, and paragraph 5 of Schedule 8 to, the Energy Act 2011 (c.16), regulation 48 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), articles 2 and 13 of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), section 26 of, and paragraphs 30 and 43 of part 1 of Schedule 6 to, the Enterprise and Regulatory Reform Act 2013 (c.24), and regulation 5 of the Electricity and Gas (Internal Markets) Regulations (S.I. 2014/3332).

certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“the outline construction worker travel plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction worker travel plan for the purposes of this Order;

“the outline landscape and biodiversity strategy” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and biodiversity strategy for the purposes of this Order;

“the outline public right of way management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline public right of way management plan for the purposes of this Order;

“the outline surface water drainage strategy” means the outline surface water drainage strategy in section 6.0 of the flood risk assessment;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“permitted preliminary works” means all or any of (1) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery; (2) above ground site preparation for temporary facilities for the use of contractors; (3) the provision of temporary means of enclosure and site security for construction; (4) the temporary display of site notices or advertisements; and (5) site clearance (including vegetation removal, demolition of existing buildings and structures);

“Planning Acts” means the Town and Country Planning Act 1947(b), the Town and Country Planning Act 1962(c), the Town and Country Planning Act 1971(d), and the 1990 Act;

“plot” means the plots listed in the book of reference and as shown on the land plans;

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order and “requirement” means any one of the requirements;

“stage 1” means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9 (only in so far as applicable to numbered work 1), 11 (only in so far as applicable to numbered work 1), 12A, 13 and 14 and as further described in the environmental statement;

“stage 2” means numbered works 2, 3B, 4B, 8B, 9 (only in so far as applicable to numbered work 2), 11 (only in so far as applicable to numbered work 2), 12B and as further described in the environmental statement;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and includes a public communications provider defined by section 151(1) of the Communications Act 2003(e);

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“street works” means the works listed in article 9(1);

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(a) 1981 c.67.

(b) 1947 c.51 as repealed by the Town and Country Planning Act 1962 and Planning (Consequential Provisions) Act 1990 (c.11).

(c) 1962 c.38 as repealed by the Town and Country Planning Act 1971 and Planning (Consequential Provisions) Act 1990 (c.11).

(d) 1971 c.78 as repealed by the Planning (Consequential Provisions) Act 1990 (c.11).

(e) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Drax Power Limited or the person who has the benefit of this Order in accordance with articles 6 and 7;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) to this Order and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in Schedule 1 (authorised development) to this Order and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1D inclusive and the same principle applies to such numbered works that contain letters.

(5) The expression “includes” is to be construed without limitation.

(6) All areas described in square metres in the book of reference are approximate.

(7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work may only be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

#### **Maintenance of authorised development**

4.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

#### **Operation of authorised development**

5.—(1) The undertaker is authorised to use and operate the generating stations comprised in the authorised development.



(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

### **Benefit of the Order**

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to—

- (a) Work No. 6A in relation to which this Order has effect for the benefit of the undertaker and NGG; and
- (b) Work No 8 in relation to which this Order has effect for the benefit of the undertaker and NGET.

### **Consent to transfer benefit of the Order**

7.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is—
  - (i) the holder of a licence under section 6 of the Electricity Act 1989;
  - (ii) in relation only to a transfer or lease of Work No. 6 or Work No. 7 the holder of a licence under section 7 of the Gas Act 1986(a); or
  - (iii) in relation to a transfer or lease of any works within a highway a highway authority responsible for the highways within the Order land; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

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(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27) and Part 1 of Schedule 23 to the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

### **Application and modification of statutory provisions**

**8.**—(1) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> insofar as they relate to temporary possession of land under articles 28 (temporary use of land for carrying out the authorised development) and 29 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Acts prior to that date is hereby excluded and does not apply but only insofar as such approval, grant, permission, authorisation or agreement relates to the Order limits and is inconsistent with the authorised development and anything approved under the requirements.

(3) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991<sup>(b)</sup>; and
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.

## **PART 3**

### **STREETS**

#### **Street works**

**9.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;

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(a) 2017 c.20.

(b) 1991 c.59 as amended by the Flood and Water Management Act 2010 (c.29) and words substituted by S.I 2009/1307.

- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) construct a bridge over the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) (b) (c) (d) and (e).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers), 51(1) (prohibition of unauthorised street works) of the 1991 Act and section 176 (restrictions on construction of bridges over highways) of the 1980 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article, “bridge” has the same meaning as in section 176(8) of the 1980 Act.

### **Power to alter layout, etc., of streets**

**10.**—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Construction and maintenance of new or altered means of access**

**11.**—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (those parts of the access to be maintained by the street authority) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (those works to restore the temporary accesses which will be maintained by the street authority) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

### **Temporary stopping up of streets and public rights of way**

**12.—**(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily stop up, prohibit the use of, restrict the use of, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, prohibit the use of, restrict the use of, alter or divert the streets specified in column (2) of the table in Part 1 of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of the table in Part 1 of Schedule 6 and the public rights of way specified in column (2) of the table in Part 2 of Schedule 6 (public rights of way to be temporarily stopped up) to the extent specified in column (3) of the table in Part 2 of Schedule 6 (public rights of way to be temporarily stopped up).

(4) The undertaker must not temporarily stop up, prohibit the use of, restrict the use of, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) Without prejudice to the requirements of paragraph (4), the undertaker must not exercise the powers in paragraphs (1) and (3) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(8) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3) of this article has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(a) (road traffic contraventions subject to civil enforcement).

(9) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a "road" means a road that is a public highway maintained by and at the expense of the traffic authority.

### **Permanent stopping up of public rights of way**

**13.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the public rights of way specified in column (2) of Schedule 7 (public rights of way to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (3) of that Schedule.

(2) No public right of way specified in columns (2) and (3) of Schedule 7 (public rights of way to be permanently stopped up) is to be wholly or partly stopped up under this article unless—

- (a) it is necessary for the undertaker to take such action in order to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so; and
- (b) the new public right of way to be substituted for it, which is specified in column (4) of that table in Schedule 7, has been completed in accordance with the details approved under requirement 9 and is open for use; or
- (c) a temporary alternative route for the public as could have used the public right of way to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the public right of way, until the completion and opening of the new public right of way in accordance with sub-paragraph (b).

(3) Where a public right of way has been stopped up under this article—

- (a) all rights of way over or along the public right of way so stopped up are extinguished; and

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(a) 2004 c.18.

- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the public right of way as is bounded on both sides by land owned by the undertaker.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

#### **Access to works**

**14.** The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 4 (streets subject to permanent alteration of layout);
- (b) form and lay out the temporary means of access in the location specified in Part 2 of Schedule 4 (streets subject to temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

#### **Agreements with street authorities**

**15.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the construction and maintenance of the structure of any bridge or tunnel carrying a street (including any footbridge over a street);
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access); and/or
- (f) the adoption by a street authority which is the highway authority of works—
  - (i) undertaken on a street which is existing publicly maintainable highway; and/or
  - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**16.—**(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(a)</sup> (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(b)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### **Authority to survey and investigate the land**

**17.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

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(a) 1991 c.56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), sections 32(2) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

(b) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
  - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
  - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

## **Removal of human remains**

- 18.—**(1) In this article “the specified land” means the Order land.
- (2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.
- (3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—
- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
  - (b) displaying a notice in a conspicuous place on or near to the specified land.
- (4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.
- (5) At any time within fifty-six days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.
- (6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—
- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
  - (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).



(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of fifty-six days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within fifty-six days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of fifty-six days; or
- (c) within fifty-six days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (11) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the address mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

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(a) 1857 c.81. Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2. There are other amendments to this Act which are not relevant to this Order.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**19.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article 22 (compulsory acquisition of rights), article 25 (acquisition of subsoil only), article 28 (temporary use of land for carrying out the authorised development) and article 30 (statutory undertakers).

#### **Statutory authority to override easements and other rights**

**20.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

#### **Time limit for exercise of authority to acquire land compulsorily**

**21.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 28 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

## **Compulsory acquisition of rights etc**

**22.**—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights as are specified in column 2 of the table in that Schedule.

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land), schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

## **Private rights**

**23.**—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry); or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights over land or the creation of rights over land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it;

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**24.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of act) for subsection (2) there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in Section 5A” substitute—

“section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201\*.”.

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) there is substituted—

“(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008,”

(8) In section 7 (constructive notice to treat) in subsection (1)(a), “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“But see article 25(3) (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201\* which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article 26 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**25.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights etc) as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

**26.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201\*”.

(3) In section 11A (powers of entry: further notices of entry)—

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute

“article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201\*”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201\*, which excludes the acquisition of subsoil only from this Schedule.”.

(b) after paragraph 29 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for carrying out the authorised development) or article 29 (temporary use of land for maintaining the authorised development) or article 35 (protective works to buildings) of the Drax Power (Generating Stations) Order 201\*.”.

### **Rights under or over streets**

**27.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**28.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table in that Schedule; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any buildings, fences, debris and vegetation from that land;

- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
  - (d) construct any works specified in relation to that land in column (2) of the table in Schedule 10 (land of which temporary possession may be taken), or any mitigation works.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of Work No. 1A full commissioning; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of Work No. 1A full commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.
- (5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or debris removed under this article.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (10) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired) under article 22 (compulsory acquisition of rights etc.); or
  - (b) acquiring any right in the subsoil of any part of the Order land under article 25 (acquisition of subsoil only) or article 27 (rights under or over streets).
- (11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.
- (12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10 (land of which temporary possession may be taken).

## **Temporary use of land for maintaining the authorised development**

**29.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of Work No. 1A full commissioning except where the authorised development is landscaping where “the maintenance period” means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping is completed.

## **Statutory undertakers**

**30.** Subject to the provisions of Schedule 12 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land; and



- (c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

### **Apparatus and rights of statutory undertakers in streets**

**31.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc. of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (temporary stopping up of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

**32.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

### **Compulsory acquisition of land – incorporation of the mineral code**

**33.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

## **PART 6**

### **OPERATIONS**

#### **Felling or lopping of trees and removal of hedgerows**

**34.—**(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2) remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) The Undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article "hedgerow" has the same meaning as in the Hedgerow Regulations 1997(a).

### **Protective works to buildings**

**35.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with—
  - (i) in respect of stage 1, completion of stage 1; and
  - (ii) in respect of stage 2, completion of stage 2.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days' notice of its intention to exercise that right and, in a

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(a) S.I. 1997/1160.

case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of completion of the part of the authorised development carried out in the vicinity of the building it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Protective provisions**

**36.** Schedule 12 (protective provisions) has effect.

#### **Application of landlord and tenant law**

**37.—**(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for purposes of the 1990 Act**

**38.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land).

### **Defence to proceedings in respect of statutory nuisance**

**39.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Certification of plans etc**

**40.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 17 of Schedule 14 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

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(a) 1990 c.43. Section 82 was amended by section 103 to the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.  
 (b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

## Service of notices

**41.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(a)</sup> (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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(a) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

### **Procedure in relation to certain approvals etc**

**42.**—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 11 (procedure for discharge) is to have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

### **Arbitration**

**43.** Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

### **Guarantees in respect of payment of compensation**

**44.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 19 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights etc);
- (c) article 23 (private rights);
- (d) article 27 (rights under or over streets);
- (e) article 28 (temporary use of land for carrying out the authorised development);
- (f) article 29 (temporary use of land for maintaining the authorised development); and
- (g) article 30 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Name*

Date

Department of Business, Energy and Industrial Strategy

# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the County of North Yorkshire and the District of Selby a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act all as set out in this Schedule.

The nationally significant infrastructure project comprises up to four generating stations with a combined gross electrical output capacity of up to 3,800 megawatts comprising all or any of the work numbers in this schedule or any part of any work number in this schedule—

**Work No. 1** – an electricity generating station (Unit X) fuelled by natural gas and with a gross electrical output capacity of up to 1,800 megawatts including—

- (a) **Work No. 1A** – a gas generating unit—
  - (i) up to two gas turbines able to operate in both combined cycle and open cycle modes;
  - (ii) one turbine hall building for the gas turbine(s) within this Work;
  - (iii) up to two heat recovery steam generators;
  - (iv) up to two heat recovery steam generator buildings and up to two exhaust gas emission flue stacks for the heat recovery steam generator(s) within this Work;
  - (v) up to two bypass stacks;
  - (vi) transformers;
  - (vii) gas turbine air inlet filter house;
  - (viii) power control centre;
  - (ix) feed water pump house building;
  - (x) water supply and pipelines;
  - (xi) water storage tanks and pipelines;
  - (xii) emergency diesel generator and diesel fuel tank for safe shut-down of the plant;
  - (xiii) switch gear and ancillary equipment;
  - (xiv) up to two turbine outage store buildings;
  - (xv) 400 kilovolt electrical underground cables and telemetry and electrical protection auxiliary cabling connecting to Work No. 4A; and
  - (xvi) a new main fuel gas station comprising up to two individual fuel gas stations comprising for each—
    - (aa) a gas receiving area;
    - (bb) gas treatment and control facilities including filters, preheating and liquid collection tanks; and
    - (cc) other auxiliary control cabinets
- (b) **Work No. 1B**
  - (i) a new main pipe rack carrying main steam and condensate, and auxiliary cabling and pipework between the heat recovery steam generator(s) and the existing steam turbine;
  - (ii) piling for foundations to accommodate the pipe rack including in connection with the pipe rack comprising part of Work No. 2B; and
  - (iii) modifications to the existing steam turbine, generating plant and turbine hall building

- (c) **Work No. 1C** – a new underground gas pipeline across New Road connecting Work No. 1A to Work No. 5
- (d) **Work No. 1D** – in connection with and in addition to Work Nos. 1A, 1B and 1C—
  - (i) works connecting Work Nos. 1A, 1B and 1C to existing equipment and utilities;
  - (ii) ground raising and ground preparation works;
  - (iii) site lighting infrastructure, including perimeter lighting columns;
  - (iv) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
  - (v) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;
  - (vi) electricity (including a 132 kilovolt electricity cable across New Road connecting Work No. 1A to Work No.5), water, wastewater and telecommunications and other services; and
  - (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

**Work No. 2** – an electricity generating station (Unit Y) fuelled by natural gas and with a gross electrical output capacity of up to 1,800 megawatts including—

- (a) **Work No. 2A** – a gas generating unit—
  - (i) up to two gas turbines able to operate in both combined cycle and open cycle modes;
  - (ii) one turbine hall building for the gas turbine(s) within this Work;
  - (iii) up to two heat recovery steam generators;
  - (iv) up to two heat recovery steam generator buildings and up to two exhaust gas emission flue stacks for the heat recovery steam generator(s) within this Work;
  - (v) up to two bypass stacks;
  - (vi) transformers;
  - (vii) gas turbine air inlet filter house;
  - (viii) power control centre;
  - (ix) feed water pump house building;
  - (x) water supply and pipelines;
  - (xi) water storage tanks and pipelines;
  - (xii) emergency diesel generator and diesel fuel tank for safe shut-down of the plant;
  - (xiii) switch gear and ancillary equipment;
  - (xiv) 400 kilovolt electrical underground cables and telemetry and electrical protection auxiliary cabling connecting to Work No. 4B; and
  - (xv) a new main fuel gas station comprising up to two individual fuel gas stations comprising for each—
    - (aa) a gas receiving area;
    - (bb) gas treatment and control facilities including filters, preheating and liquid collection tanks; and
    - (cc) other auxiliary control cabinets.
- (b) **Work No. 2B**
  - (i) a new main pipe rack and extension to the pipe rack in Work No. 1B carrying main steam and condensate, and auxiliary cabling and pipework, between the heat recovery steam generator(s) and the existing steam turbine; and
  - (ii) modifications to the existing steam turbine, generating plant and turbine hall building.



- (c) **Work No. 2C** – a new underground gas pipeline across New Road connecting Work No. 2A to Work No. 5 or infrastructure to connect the underground gas pipeline constructed in Work No. 1C to Work No. 2A and Work No. 5.
- (d) **Work No. 2D** – in connection with and in addition to Work Nos. 2A, 2B and 2C—
  - (i) works connecting Work Nos. 2A, 2B and 2C to existing equipment and utilities;
  - (ii) ground raising and ground preparation works;
  - (iii) site lighting infrastructure, including perimeter lighting columns;
  - (iv) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
  - (v) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;
  - (vi) electricity, water, wastewater and telecommunications and other services; and
  - (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

**Work No. 3** – up to two battery storage facilities including—

- (a) **Work No. 3A** – one battery storage facility (in connection with Unit X)—
  - (i) battery energy storage cells with converters;
  - (ii) a structure protecting the battery energy storage cells;
  - (iii) transformers;
  - (iv) switch gear and ancillary equipment;
  - (v) electrical underground cable connecting to Work No. 1A;
  - (vi) ground raising and ground preparation works;
  - (vii) a flood mitigation channel;
  - (viii) site lighting infrastructure, including lighting columns; and
  - (ix) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (b) **Work No. 3B** – one battery storage facility (in connection with Unit Y)—
  - (i) battery energy storage cells with converters;
  - (ii) a structure protecting the battery energy storage cells or infrastructure to include the battery energy storage cells in the structure(s) within Work No.3A(ii);
  - (iii) transformers;
  - (iv) switch gear and ancillary equipment; and
  - (v) electrical underground cable connecting to Work No. 2A

**Work No. 4** – new gas insulated switchgear banking buildings including—

- (a) **Work No. 4A** (in connection with Unit X)—
  - (i) a building containing gas insulated switchgear and other associated switch gear and ancillary equipment;
  - (ii) a building containing control equipment;
  - (iii) up to 3 sets of cable sealing ends; and
  - (iv) ground raising and ground preparation works
- (b) **Work No. 4B** (in connection with Unit Y)—
  - (i) a building or an extension to the building in Work No. 4A containing gas insulated switchgear and other switch gear and ancillary equipment;
  - (ii) up to 3 sets of cable sealing ends; and
  - (iii) ground raising and ground preparation works

**Work No. 5** – a natural gas receiving facility compound including—

- (a) pipeline inspection gauge (PIG) trap receiving equipment;
- (b) isolation valves, inline valves, metering, heat exchangers, filtering, pressure regulation equipment, pipework;
- (c) electricity supply kiosks and associated cabling;
- (d) emergency generator;
- (e) electrical pre-heaters and electrical compressors housed in a building;
- (f) up to two boiler houses with a total installed capacity of 7.2 megawatts and each with up to two stacks;
- (g) control and instrumentation kiosk(s) and associated wiring;
- (h) creation of a permanent access from New Road including permanent road surface and kerb stones, signing and road markings works, drainage, car parking, fencing and other incidental works;
- (i) security infrastructure, including cameras, lighting (including perimeter lighting columns), stock proof fencing and perimeter fencing;
- (j) a new underground gas pipeline;
- (k) external cooling system;
- (l) ground raising and ground preparation works; and
- (m) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

**Work No. 6** – above ground gas installation including—

- (a) **Work No. 6A**—
  - (i) above ground installation (also referred to as a minimum offtake connection compound) containing a minimum offtake connection comprising remotely operable valves, control and instrumentation kiosk(s), pipework and electrical supply kiosk(s);
  - (ii) security infrastructure, including cameras, lighting (including perimeter lighting columns), stock proof fencing and perimeter fencing;
  - (iii) ground raising and ground preparation works;
  - (iv) site drainage including new outfall to Dickon Field Drain, new culvert and waste management infrastructure;
  - (v) electricity and telecommunications connections and other services;
  - (vi) underground gas pipeline connecting to Work No. 6B;
  - (vii) creation of a permanent access from Rusholme Lane including permanent road surface and kerb stones, signing and road markings works, car parking, drainage, fencing and other incidental works;
  - (viii) creation of a permanent access from the access in Work No.6A (vii) into the field to the south of Dickon Field Drain including permanent road surface and kerb stones, signing and road markings works, drainage, fencing and other incidental works;
  - (ix) creation of a culvert on Dickon Field Drain; and
  - (x) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (b) **Work No. 6B**—
  - (i) above ground installation containing a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control valves, isolation valves, control and instrumentation kiosk(s), pipework and electricity supply kiosk(s);
  - (ii) security infrastructure, including cameras, lighting (including perimeter lighting columns), car parking, stock proof fencing and perimeter fencing;

- (iii) ground raising and ground preparation works;
- (iv) site drainage and waste management infrastructure;
- (v) electricity and telecommunications connections and other services;
- (vi) below ground sacrificial anode pit; and
- (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (c) **Work No. 6C** – (in connection with Work No. 6A) temporary construction laydown area
- (d) **Work No. 6D** – (in connection with Work No. 6B) temporary construction laydown area and creation of up to two construction access routes from Rusholme Lane

**Work No. 7** – a gas pipeline including—

- (a) **Work No. 7A**—
  - (i) an underground gas pipeline connection and telemetry cabling, 3km in length and up to 600 millimetres nominal diameter, connecting Work No. 5 to Work No. 6B;
  - (ii) pipeline field marker posts and cathodic protection test/ transformer rectifier unit(s);
  - (iii) below ground drainage works;
  - (iv) works required in order to protect existing utilities infrastructure;
  - (v) tree and hedge removal; and
  - (vi) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (b) **Work No. 7B** – temporary construction laydown area for gas pipeline

**Work No. 8** – electrical connections including—

- (a) **Work No. 8A** (in connection with Unit X) – up to 400 kilovolt underground electrical connection between Work No. 4A and the existing 400 kilovolt National Grid substation busbars—
    - (i) electrical underground cables and telemetry and electrical protection auxiliary cabling;
    - (ii) one set of cable sealing ends;
    - (iii) insulated switchgear and overhead busbars;
    - (iv) trenching works;
    - (v) site drainage;
    - (vi) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns; and
    - (vii) hard and soft landscaping including ecological mitigation.
  - (b) **Work No. 8B** (in connection with Unit Y) – up to 400 kilovolt underground electrical connection between Work No. 4B and the existing 400 kilovolt National Grid substation busbars of either—
    - (i) electrical underground cables and telemetry and electrical protection auxiliary cabling;
    - (ii) one set of cable sealing ends;
    - (iii) insulated switchgear and overhead busbars;
    - (iv) trenching works;
    - (v) site drainage;
    - (vi) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns; and
    - (vii) hard and soft landscaping including ecological mitigation.
- Or—

- (i) electrical underground cables and telemetry and electrical protection auxiliary cabling;
- (ii) a 400 kilovolt cable sealing end compound—
  - (aa) one set of cable sealing ends;
  - (bb) air insulated switchgear and overhead busbars; and
  - (cc) overhead conductor gantry, overhead conductors and other plant and structures required to manage the transmission of electricity;
- (iii) trenching works;
- (iv) site drainage;
- (v) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns; and
- (vi) hard and soft landscaping including ecological mitigation.

**Work No. 9** – temporary construction laydown areas including—

- (a) **Work No. 9A** – temporary construction laydown area—
  - (i) areas of hardstanding;
  - (ii) car parking;
  - (iii) pedestrian bridge including ducts for the carrying of electricity and other utility services;
  - (iv) site and welfare offices and workshops;
  - (v) security infrastructure, including cameras, perimeter fencing and lighting;
  - (vi) site drainage and waste management infrastructure (including sewerage); and
  - (vii) electricity, water, waste water and telecommunications connections.
- (b) **Work No. 9B** – a temporary construction laydown area—
  - (i) areas of hardstanding;
  - (ii) security infrastructure, including cameras, perimeter fencing and lighting;
  - (iii) up to two means of access;
  - (iv) site drainage and waste management infrastructure (including sewerage);
  - (v) car parking; and
  - (vi) electricity, water, waste water and telecommunications connections.

**Work No. 10** – carbon capture readiness including—

- (i) **Work No. 10A** – carbon capture readiness reserve space;
- (ii) **Work No. 10B** – diversions for public rights of way 35.47/1/1 and 35.47/6/1; and
- (iii) **Work No. 10C** – hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments.

**Work No. 11** – retained and enhanced landscaping including—

- (a) soft landscaping including planting;
- (b) landscape and biodiversity enhancement measures; and
- (c) security fencing, gates, boundary treatment and other means of enclosure.

**Work No. 12** – decommissioning and demolition of sludge lagoons and construction of replacement sludge lagoons including—

- (a) **Work No. 12A** (in connection with Unit X)—
  - (i) decommissioning and demolition of one existing sludge lagoon; and
  - (ii) reinstatement of one existing out of service sludge lagoon—
    - (aa) bund walls;

- (bb) underground pipework, valves and sluices; and
  - (cc) access roads.
- (b) **Work No. 12B** (in connection with Unit Y)—
  - (i) decommissioning and demolition of 2 existing sludge lagoons; and
  - (ii) construction of up to two new sludge lagoons—
    - (aa) bund walls;
    - (bb) underground pipework, valves and sluices; and
    - (cc) access roads.

**Work No. 13** – removal of existing 132 kilovolt overhead line and removal of two 132 kilovolt pylons and foundations.

**Work No. 14** – construction of temporary passing place on Rusholme Lane.

In connection with and in addition to Work Nos. 1–14, further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position of, such services and utilities connections;
- (c) hard standing and hard landscaping;
- (d) biodiversity measures;
- (e) closed circuit television cameras and columns and other security measures;
- (f) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (g) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (h) vehicle parking and cycle storage facilities;
- (i) accesses, roads and pedestrian and cycle routes;
- (j) tunnelling, boring and drilling works,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2

### REQUIREMENTS

Article 3

#### **Interpretation**

**1.** In this Schedule—

“construction laydown area” means the land on which numbered work 9 is authorised to be carried out as shown on the works plans;

“pipeline area” means the land on which numbered works 5, 6 and 7 are authorised to be carried out as shown on the works plans;

“power station area” means the land on which numbered works 1, 2, 3, 4, 8, 12 and 13 are authorised to be carried out as shown on the works plans;

“shut down period” means a period after physical construction works have finished for the day during which activities including changing out of work gear, the departure of workers, post-works briefings and closing and securing the site take place; and

“start up period” means a period prior to physical construction works starting for the day during which activities including the opening up of the site, the arrival of workers, changing into work wear and pre-work briefings take place.

#### **Commencement of the authorised development**

**2.** The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

#### **Phasing of the authorised development**

**3.—**(1) No part of the authorised development is to commence until a written scheme setting out the phasing of construction of numbered works 1, 2 and 3 has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the phasing as detailed in chapter 3 (site and project description) of the environmental statement and must include details of timescales for the reinstatement or restoration of the temporary construction laydown areas comprised in numbered works 6C, 6D, 7B and 9, in line with the outline landscape and biodiversity strategy.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

#### **Notice of start of commissioning and notice of date of full commissioning**

**4.—**(1) Notice of the intended start of commissioning of each of numbered works 1A and 2A must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(2) Within seven days of the completion of the commissioning of numbered work 1A, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

(3) Within seven days of the completion of the commissioning of numbered work 2A, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

## **Requirement for written approval**

5. Where under any of these requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

## **Approved details and amendments to them**

6.—(1) With respect to the documents certified under article 40 (certification of plans etc), the parameters specified in Tables 12, 13, 14, 15 and 16 of Schedule 13 (design parameters) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## **Detailed design approval**

7.—(1) In relation to any part of the authorised development comprised in numbered work 1, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.

(2) In relation to any part of the authorised development comprised in numbered work 2, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.

(3) In relation to any part of the authorised development comprised in numbered work 3A, no development of that part must commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures including any cladding or shield to enclose or protect the battery energy storage cells;
- (b) finished floor levels;
- (c) flood mitigation channel;
- (d) hard standings; and

(e) the internal vehicular access and circulation roads.

(4) In relation to any part of the authorised development comprised in numbered work 3B, no development of that part must commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures including any cladding or shield to enclose or protect the battery energy storage cells;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads.

(5) In relation to any part of the authorised development comprised in numbered work 4A, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(6) In relation to any part of the authorised development comprised in numbered work 4B, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(7) In relation to any part of the authorised development comprised in numbered work 5, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(8) In relation to any part of the authorised development comprised in numbered work 6, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (f) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;



- (d) the size of the culvert in numbered work 6A(xi);
- (e) security infrastructure; and
- (f) the internal vehicular access, circulation roads and vehicle parking.

(9) In relation to the pedestrian bridge in numbered work 9A, no development of any part of the pedestrian bridge must commence until the undertaker has submitted to the highway authority for approval detailed design and safety drawings of the pedestrian bridge.

(10) The authorised development must be carried out in accordance with the relevant parameters in Schedule 13 (design parameters).

(11) Numbered works 1, 2, 3A, 4A, 4B, 5 and 6 must be carried out in accordance with the approved details under this requirement.

### **Provision of landscape and biodiversity mitigation**

**8.**—(1) No part of the numbered works comprising stage 1 must be commenced until, for those numbered works, a written strategy which is substantially in accordance with the outline landscape and biodiversity strategy and chapter 9 (biodiversity) of the environmental statement (as each is relevant for that numbered work) has been submitted to and, after consultation with North Yorkshire County Council, approved by the relevant planning authority.

(2) No part of the numbered works comprising stage 2 must be commenced until, for those numbered works, a written strategy which is substantially in accordance with the outline landscape and biodiversity strategy and chapter 9 (biodiversity) of the environmental statement (as each is relevant for that numbered work) has been submitted to and, after consultation with North Yorkshire County Council, approved by the relevant planning authority.

(3) The strategies submitted and approved pursuant to sub-paragraphs (1) and (2) (as applicable) must include details of all proposed hard and soft landscaping works and ecological mitigation measures (as applicable for the relevant numbered work) and, where applicable,—

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) hard surfacing materials;
- (d) an implementation timetable;
- (e) annual landscaping and biodiversity management and maintenance;
- (f) the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of the ecological mitigation measures; and
- (g) an explanation for how the design of the numbered works comprised in the stage, which is the subject of the strategy, has sought to maximise the biodiversity net gain of the authorised development as far as practicable.

(4) Any shrub or tree planted as part of the approved strategy that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

(5) The strategies must be implemented and maintained in accordance with the implementation timetable in the strategy submitted and approved pursuant to sub-paragraphs (1) and (2).

### **Public rights of way diversions**

**9.**—(1) Numbered work 7 of the authorised development must not commence until, for that numbered work, a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the access and rights of way plans for that numbered work and which is substantially in accordance with the outline public rights of way management plan has

been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(3) No public right of way specified in columns (2) and (3) of the table in Schedule 7 (public rights of way to be permanently stopped up) is to be wholly or partly stopped up under article 13 (permanent stopping up of public rights of way) of this Order until the detail of the materials for the form and lay out of the surface of the new public right of way to be substituted for it, which is specified in column (4) of the table in Schedule 7, have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(4) The details submitted and approved pursuant to sub-paragraph (3) must be implemented as approved.

### **External lighting during construction and operation**

**10.—**(1) No part of the numbered works comprising stage 1 must commence until a written scheme for the temporary external lighting to be installed for the purposes of construction for that numbered work has been submitted to and approved by the relevant planning authority.

(2) No part of the numbered works comprising stage 2 must commence until a written scheme for the temporary external lighting to be installed for the purposes of construction for that numbered work has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be substantially in accordance with the principles set out in chapter 9 (biodiversity) and chapter 10 (landscape and visual amenity) of the environmental statement and the objectives set out in the outline construction environmental management plan and must include details of the temporary external lighting to be installed for the purposes of the construction of the relevant numbered works.

(4) Prior to the date of Work No. 1A full commissioning a written scheme for the permanent external lighting to be installed for the purposes of operation for the numbered works comprising stage 1 must be submitted to and approved by the relevant planning authority.

(5) Prior to the date of Work No. 2A full commissioning a written scheme for the permanent external lighting to be installed for the purposes of operation for the numbered works comprising stage 2 must be submitted to and approved by the relevant planning authority.

(6) The schemes submitted and approved pursuant to sub-paragraphs (4) and (5) of this requirement must be substantially in accordance with the principles set out in chapter 9 (biodiversity) and chapter 10 (landscape and visual amenity) of the environmental statement and must include details of the permanent external lighting to be installed for the purposes of the operation of the relevant numbered works.

(7) The schemes must be implemented as approved.

### **Highway accesses and passing place during construction**

**11.—**(1) Each of numbered works 5, 6, 7, 9B and 14 of the authorised development must not commence until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access and passing place between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any temporary means of access and passing place after construction (where reinstatement is to take place) has, for that numbered work, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses and passing place approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant numbered work (other than the accesses and passing place), and where temporary, reinstated prior to—

- (a) in respect of numbered works 5, 6, 7 and 14, the date that is no later than 12 months after the date of Work No. 1A full commissioning; and
- (b) in respect of numbered work 9B, the date that is no later than 12 months after the date of Work No. 2A full commissioning.

### **Means of enclosure**

**12.—**(1) Each of numbered works 5, 6A, 6B, 7, 8B (in relation to the 400 kilovolt cable sealing end compound) and 9 of the authorised development must not commence until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites have, for that numbered work, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites must remain securely fenced at all times during construction and commissioning of the authorised development in accordance with the details approved pursuant to sub-paragraph (1).

(3) Prior to the date of Work No. 1A full commissioning—

- (a) details of any proposed permanent means of enclosure for each of numbered works 5, 6A and 6B must be submitted to and approved by the relevant planning authority; and
- (b) the approved permanent means of enclosure must be completed.

(4) Prior to the date of Work No. 2A full commissioning—

- (a) details of any proposed permanent means of enclosure for numbered work 8B (in relation to the 400 kilovolt cable sealing end compound) must be submitted to and approved by the relevant planning authority; and
- (b) the approved permanent means of enclosure must be completed.

### **Surface water drainage**

**13.—**(1) Each of numbered works 1, 2, 3A, 5 and 6 of the authorised development must not commence until a surface water drainage scheme for that numbered work has been submitted to, and after consultation with the Environment Agency, lead local flood authority and relevant internal drainage board, approved by the relevant planning authority.

(2) The details approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of numbered works 1, 2, 3A, 5 and 6 of the authorised development.

(3) The surface water drainage scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the principles set out in the outline surface water drainage strategy.

(4) The details approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of numbered works 1, 2, 3A, 5 and 6 of the authorised development.

### **Flood risk mitigation**

**14.—**(1) The authorised development must be carried out in accordance with the flood risk assessment.

(2) In relation to any part of the authorised development comprised in numbered work 3A, no development of that part must commence until the flood mitigation channel comprised in that numbered work has been completed.

### **Ground conditions**

**15.—**(1) No part of the numbered works comprising stage 1 must commence (including permitted preliminary works comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only)

until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order limits associated with that numbered work has been submitted to and approved by the relevant planning authority.

(2) No part of the numbered works comprising stage 2 must commence (including permitted preliminary works comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order limits associated with that numbered work has been submitted to and approved by the relevant planning authority.

(3) The strategy submitted and approved pursuant to sub-paragraph (1) or (2) must—

- (a) include a site investigation scheme, based on the preliminary risk assessment set out in chapter 11 (ground conditions and contamination) of the environmental statement and providing details of the detailed risk assessment to be carried out for the receptors on or in the vicinity of the Order limits that may be affected by the authorised development;
- (b) set out how the outcomes of the site investigation scheme and detailed risk assessment carried out pursuant to (a) above will be reported, and provide for the submission and approval by the relevant planning authority of an options appraisal and remediation strategy based on such outcomes and providing details of any remediation measures required and how they are to be carried out; and
- (c) include a verification plan identifying the data to be collected in order to demonstrate that the remediation measures set out in the options appraisal and remediation strategy prepared pursuant to (b) above have been completed and are effective, and any requirement for long term monitoring of pollutant linkages, maintenance or arrangements for contingency action.

(4) Prior to the date of Work No. 1A full commissioning a report prepared substantially in accordance with the verification plan prepared pursuant to sub-paragraph (3)(c) and approved pursuant to sub-paragraph (1) must be submitted to and approved by the relevant planning authority.

(5) Prior to the date of Work No. 2A full commissioning a report prepared substantially in accordance with the verification plan prepared pursuant to sub-paragraph (3)(c) and approved pursuant to sub-paragraph (2) must be submitted to and approved by the relevant planning authority.

(6) If, during the carrying out of the authorised development on—

- (a) the power station area;
- (b) the pipeline area; or
- (c) the construction laydown area

contamination not previously identified is found to be present on such area(s) no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the area(s) on which the contamination has been found until a remediation strategy detailing how such contamination must be dealt with has been submitted to and approved by the relevant planning authority.

(7) The authorised development must be carried out in accordance with the strategies approved pursuant to sub-paragraphs (1) and (2) and any remediation strategy approved pursuant to sub-paragraph (6).

## **Archaeology**

**16.—**(1) Each of numbered works 5, 6, 7, 9B and 14 of the authorised development must not commence (including permitted preliminary works comprising intrusive archaeological surveys only) until a written scheme of investigation has, for that numbered work, been submitted to and, after consultation with North Yorkshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with chapter 8 (cultural heritage) of the environmental statement.

(3) The scheme must—

- (a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified; and
- (b) provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found.

(4) Without prejudice to the generality of sub-paragraph (3), the scheme for numbered work 6 must provide details of a strip, map and record excavation for that numbered work.

(5) Without prejudice to the generality of sub-paragraph (3), the scheme for numbered works 5, 7, 9B and 14 must provide details of archaeological monitoring to be undertaken during construction of those numbered works.

(6) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority in consultation with North Yorkshire County Council.

### **Construction environmental management plan**

**17.—**(1) No part of the authorised development must commence (including permitted preliminary works comprising site clearance only), until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the outline construction environmental management plan and must detail how the outcomes of the ground investigations carried out pursuant to requirement 15 have been taken into account in the preparation of the plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

### **Construction traffic management plan**

**18.—**(1) No part of the authorised development must commence, save for numbered works 11, 13 and 14, until a construction traffic management plan has, for that part, been submitted to and, after consultation with Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction traffic management plan.

(3) Notices must be erected and maintained by the undertaker throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(4) The plan must be implemented as approved.

### **Construction worker travel plan**

**19.—**(1) No part of the authorised development must commence, save for numbered works 11, 13 and 14, until a construction worker travel plan has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction worker travel plan.

- (3) The plan must be implemented as approved.

### **Construction hours**

**20.**—(1) Construction work relating to the authorised development must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) for numbered work 9 and at the corresponding numbered area shown on the works plans a start up period from 0600 to 0700 and a shut down period from 1900 to 2000 Monday to Friday and a start up period from 0600 to 0700 and a shut down period from 1300 to 1400 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

### **Control of noise – operation**

**21.**—(1) The noise emitted from the top of the stacks at source in numbered works 1A and 2A must not exceed a sound power level of 98 dB(A).

(2) Prior to the date of Work No. 1A full commissioning a written scheme for the monitoring of noise emitted from the top of the stacks at source during operation of numbered work 1A must be submitted to and approved by the relevant planning authority.

(3) Prior to the date of Work No. 2A full commissioning a written scheme for the monitoring of noise emitted from the top of the stacks at source during operation of numbered work 2A must be submitted to and approved by the relevant planning authority.

(4) The schemes submitted under sub-paragraphs (2) and (3) must be implemented as approved.

### **Carbon capture readiness reserve space**

**22.** Following commencement of the authorised development and until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the carbon capture readiness reserve space; or
- (b) do anything, or allow anything to be done or to occur,

which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

### **Carbon capture readiness monitoring report**

**23.**—(1) The undertaker must make a report ('carbon capture readiness monitoring report') to the Secretary of State—

- (a) on or before the date on which three months have passed from the date of Work No. 1A full commissioning; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement 22—

- (a) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and
- (b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement 22 over the next two years.

(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.

### **Air Safety**

**24.** No part of the authorised development must commence until the undertaker has submitted confirmation to the relevant planning authority that it has provided details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes.

### **Local liaison committee**

**25.**—(1) The authorised development must not commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a 'local liaison committee').

(2) The undertaker must invite the relevant planning authority and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of stage 1 of the authorised development until the date of Work No. 1A full commissioning, or if stage 2 of the authorised development has commenced prior to the date of Work No. 1A full commissioning, the date of Work No. 2A full commissioning, unless otherwise agreed by the majority of the members of the local liaison committee;

- (c) if stage 2 of the authorised development has not commenced prior to the date of Work No. 1A full commissioning, meet every month, starting in the month prior to commencement of stage 2 of the authorised development until the date of Work No. 2A full commissioning, unless otherwise agreed by the majority of the members of the local liaison committee; and
- (d) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

#### **Decommissioning environmental management plan**

**26.**—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the scheme.

(4) The plan must be implemented as approved.

#### **Decommissioning traffic management plan**

**27.**—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with Highways England and the highway authority, a decommissioning traffic management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) route diversions; and
- (b) routing of abnormal loads and HGVs.

(4) The plan must be implemented as approved.

#### **Combined heat and power**

**28.**—(1) On the date that is 12 months after the date of Work No. 1A full commissioning (or such other date that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a report (“the CHP review”) updating the CHP statement.

(2) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist within 15 kilometres of the authorised development for the export of heat from numbered work 1A and following the date of Work No. 2A full commissioning, numbered work 2A at the time of submission of the CHP review; and



- (b) include a list of actions (if any) that the undertaker is reasonably required to take (without material additional cost to the undertaker) to increase the potential for export of heat from numbered work 1A and, following the date of Work No. 2A full commissioning, numbered work 2A.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(4) On each date during the operation of numbered work 1A and, following the date of Work No. 2A full commissioning, numbered work 2A, that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority (or such shorter timeframe that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a revised CHP review.

(5) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under sub-paragraph (4) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

## SCHEDULE 3

Article 9

### STREETS SUBJECT TO STREET WORKS

**Table 1**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of Selby	New Road	Works for the provision of a new permanent access to Work No.5 on the east side of New Road between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	New Road	Works for the installation and maintenance of Work Nos. 1C, 1D, 2C and 2D in the street between the points marked AZ and AY and AJ and AI on sheet 3 of the access rights of way plans
In the District of Selby	New Road	Works for the provision of a new temporary pedestrian bridge in Work No. 9A over New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights of way plans
In the District of Selby	Carr Lane / Wren Hall Lane	Widening and improvement works to the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No. 7 on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of

		the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No. 7 on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Works for the installation and maintenance of Work No. 7 in the street between the points marked U and V on sheet 5 of the access rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No. 7 on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No. 7 on the west side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Works for the installation and maintenance of Work No. 7 in the street between the points marked AQ and W on sheet 5 of the access rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No. 7 on the north side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No. 6D and Work No. 7 on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Works for the installation and maintenance of Work No. 7 in the street between the points

		marked BY and Z on sheet 8 of the access rights of way plans
In the District of Selby	Rusholme Lane	Works for the provision of a new permanent access to Work No. 6 on the south side of Rusholme Lane between the points marked AW and AV on sheet 8 of the access rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a passing place (Work No. 14) on the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans
In the District of Selby	A645/New Road	Street works at the A645/New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	Street works to the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	Street works to the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	Street works at the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans

## SCHEDULE 4

Article 10

### STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

#### PART 1

#### PERMANENT ALTERATION OF LAYOUT

**Table 2**

<i>(1) Area</i>	<i>(2) Streets subject to alteration of layout</i>	<i>(3) Description of alteration</i>
In the District of Selby	New Road	Works for the provision of a new permanent access to Work No. 5 on the east side of New Road between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Works for the provision of a new permanent access to Work No. 6 on the south side of Rusholme Lane between the points marked AW and AV on sheet 8 of the access rights of way plans

#### PART 2

#### TEMPORARY ALTERATION OF LAYOUT

**Table 3**

<i>(1) Area</i>	<i>(2) Streets subject to alteration of layout</i>	<i>(3) Description of alteration</i>
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights

		of way plans
In the District of Selby	Carr Lane / Wren Hall Lane	Widening and improvement works to the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No.7 on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No.7 on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No.7 on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No.7 on the west side of Main Road at the point marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No.7 on the north side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No.6D and Work No.7 on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a passing place

		(Work No.14) on the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans
In the District of Selby	A645 / New Road	Street works at the A645 / New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of Selby	A645 / New Road	Works in the street to remove street furniture between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	Aldam Dock	Works in the street to remove street furniture from the exit of Aldam Dock at the points marked AH and BR on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Normandy Way	Works in the street to remove street furniture between the points marked BO and BS on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Stanhope Street / Coronation Street	Works in the street to remove street furniture between the points marked BN and BM on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Coronation Street / Boothferry Road	Works in the street to remove street furniture between the points marked BM and BL on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Boothferry Road	Works in the street to remove street furniture between the points marked BL and BK on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Boothferry Road/Airmyn Road (A614) / Rawcliffe Road (A614)	Works in the street to remove street furniture between the points marked BK, BT and BU on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans

In the District of East Riding of Yorkshire	A161 roundabout	Works in the street to remove street furniture between the points marked BH and BI on sheet 22 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161	Works in the street to remove street furniture between the points marked BI and BJ on sheets 22 and 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout / A614	Works in the street to remove street furniture between the points marked AF and BE on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove safety barrier between the points marked BD and AG on sheets 14, 19, 20 and 21 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	Street works to the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	Works in the street to remove street furniture between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	Street works to the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	Works in the street to remove street furniture between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	Street works at the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	Works in the street to remove street furniture between the points marked BF and BG on sheet 13 of the access and rights of way plans



## SCHEDULE 5

### ACCESS

Article 11

### PART 1

#### THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

**Table 4**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	That part of the access in the area cross hatched in blue between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the access in the area cross hatched in blue between the points marked AW and AV on sheet 8 of the access and rights of way plans

### PART 2

#### THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET AUTHORITY

**Table 5**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	That part of the access in the area cross hatched in red between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the access in the area cross hatched in red between the points marked AW and AV on sheet 8 of the access and rights of way plans

## PART 3

### THOSE WORKS TO RESTORE THE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

**Table 6**

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of relevant part of access</i>
In the District of Selby	New Road	That part of the temporary construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	That part of the temporary construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights of way plans
In the District of Selby	Carr Lane / Wren Hall Lane	That part of the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	That part of the temporary construction access on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	That part of the temporary construction access on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	That part of the temporary construction access on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	That part of the temporary construction access on the west side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the new construction access on the north side of Rusholme Lane

		between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the new construction access on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans
In the District of Selby	A645 / New Road	That part of the A645 / New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	That part of the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	That part of the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	That part of the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	That part of the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	That part of the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans

## SCHEDULE 6

Article 12

### STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

#### PART 1

#### STREETS TO BE TEMPORARILY STOPPED UP ETC

**Table 7**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of temporary stopping up</i>
In the District of Selby	New Road	Temporary closure of that part of the street shown between points AB and E on sheets 2, 3 and 4 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of Selby	Wren Hall Lane	Temporary closure of that part of the street shown between points AO and AP on sheet 5 of the access and rights of way plans to install and facilitate the construction of Work No. 7
In the District of Selby	Main Road	Temporary closure of that part of the street shown between points W and X on sheet 5 of the access and rights of way plans to install and facilitate the construction of Work No. 7
In the District of Selby	Rusholme Lane	Temporary closure of that part of the street shown between points Y and AV on sheet 8 of the access and rights of way plans to install and facilitate the construction of Work Nos. 6 and 7
In the District of Selby	A645	Temporary closure of that part of the street shown between points AB and AC on sheets 10 and 11 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A645	Temporary closure of that part of the street shown between points AC and BF on sheets 11, 12 and 13 of the access and

		rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A614	Temporary closure of that part of the street shown between points BG and AE on sheets 13 and 14 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	M62	Temporary closure of that part of the street shown between points BX and AG on sheets 14, 15, 16, 17, 18, 19, 20 and 21 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A161	Temporary closure of that part of the street shown between points AF and AH on sheets 22 and 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Aldam Dock	Temporary closure of that part of the street shown between points AX and BN on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Stanhope Street / Coronation Street	Temporary closure of that part of the street shown between points BN and BM on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Coronation Street / Boothferry Road	Temporary closure of that part of the street shown between points BM and BL on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads

In the District of East Riding of Yorkshire	Boothferry Road	Temporary closure of that part of the street shown between points BL and BK on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A614 / A161	Temporary closure of that part of the street shown between BT and AF on sheets 22 and 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads

## PART 2

### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP ETC

**Table 8**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Description of temporary stopping up etc</i>
In the District of Selby	Public footpath 35.47/4/1	Between the points marked M and N on sheet 5 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/5/1	Between the points marked O and P on sheet 5 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/9/1	Between the points marked Q and R on sheet 6 of the access and rights of way plans
In the District of Selby	Public footpath 35.49/2/1	Between the points marked S and T on sheet 6 of the access and rights of way plans

## SCHEDULE 7

Article 13

### PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP

**Table 9**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Replacement public right of way</i>
In the District of Selby	Public footpath 35.47/1/1	Between the points marked J and K on sheet 2 of the access and rights of way plans	Between the points marked J and L on sheet 2 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/6/1	Between the points marked G and H on sheet 2 of the access and rights of way plans	Between the points marked G and I on sheet 2 of the access and rights of way plans

## LAND IN WHICH ONLY NEW RIGHTS ETC MAY BE ACQUIRED

**Interpretation****1. In this Schedule—**

“Work Nos. 1C, 1D, 2C and 2D infrastructure” means any works or development comprised within Work Nos. 1C, 1D, 2C and 2D in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 1C, 1D, 2C and 2D on the works plans;

“Work No. 5 infrastructure” means any works or development comprised within Work No. 5 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans;

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 6A access road” means any works or development comprised within Work No. 6A(viii), including any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans;

“Work No. 6A infrastructure” means any works or development comprised within Work No. 6A(ii), including any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans;

“Work No. 6A planting” means the hard and soft landscaping comprised within Work No. 6A(viii), including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 6A on the works plans;

“Work No. 6B infrastructure” means any works or development comprised within Work No. 6B(ii), including any other necessary works or development permitted within the area delineated as Work No. 6B on the works plans;

“Work No. 6B planting” means the hard and soft landscaping comprised within Work No. 6B(vii), including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 6B on the works plans;

“Work No. 7 infrastructure” means any works or development comprised within Work No. 7 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 7 on the works plans;

“Work No. 7A planting” means the hard and soft landscaping comprised within Work No. 7A(vi) in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 7A on the works plans;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans;

“Work No. 8 planting” means the hard and soft landscaping comprised within Work Nos. 8A(vi) and 8B(vi) in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work Nos. 8A and 8B on the works plans;

“Work No. 9A(iii) infrastructure” means any works or development comprised within Work No. 9A(iii) in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9A(iii) on the works plans;



“Work No. 10C planting” means the hard and soft landscaping comprised within Work No. 10C in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 10C on the works plans;

“Work No. 11 planting” means the retained and enhanced landscaping comprised within Work No. 11 in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 11 on the works plans;

“Work No. 13 infrastructure” means any works or development comprised within Work No. 13 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 13 on the works plans.

**Table 10**

(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
5	<p>For and in connection with the Work No. 8 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 8 planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 8 planting, together with the right to retain, maintain, inspect and replant the Work No. 8 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 planting, or interfere with or obstruct access from and to the Work No. 8 planting.</p> <p>For and in connection with the Work No. 13 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without</p>

	vehicles, plant and machinery, for all purposes in connection with the removal of the Work No. 13 infrastructure.
8a	<p>For and in connection with the Work No. 10C planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 10C planting, together with the right to retain, maintain, inspect and replant the Work No. 10C planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 10C planting, or interfere with or obstruct access from and to the Work No. 10C planting.</p> <p>For and in connection with the Work No. 11 planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 11 planting, together with the right to retain, maintain, inspect and replant the Work No. 11 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 11 planting, or interfere with or obstruct access from and to the Work No. 11 planting.</p>
9a	<p>For and in connection with the Work Nos. 1C, 1D, 2C and 2D infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work Nos. 1C, 1D, 2C and 2D infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C, 1D, 2C and 2D infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 1C, 1D, 2C and 2D infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C, 1D, 2C and 2D infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or</p>

	uses which alter the surface level, ground cover or composition of the land.
12	<p>For and in connection with the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C, 1D, 2C and 2D infrastructure and the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection</p>

	with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain, maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.
14	For and in connection with the Work No. 9A(iii) infrastructure within an air-space corridor of up to 10m in width, the right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the installation, use, maintenance and removal of the Work No. 9A(iii) infrastructure, together with the right to install, retain, use, maintain and remove the Work No. 9A(iii) infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9A(iii) infrastructure, or interfere with or obstruct access from and to the Work No. 9A(iii) infrastructure.
18, 24, 25, 56	<p>For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection</p>

	with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain, maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.
27, 27a, 29, 29a, 33, 37, 40, 42, 43, 47, 49, 50, 59	For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
58, 61, 67	For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain, maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.
65	For and in connection with the Work No. 6A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and

	<p>maintenance of the Work No. 6A infrastructure, together with the right to install, retain, use and maintain the Work No. 6A infrastructure and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A infrastructure, or interfere with or obstruct access from and to the Work No. 6A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 6A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6A planting, together with the right to retain, maintain, inspect and replant the Work No. 6A planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A planting, or interfere with or obstruct access from and to the Work No. 6A planting.</p> <p>For and in connection with the Work No. 6A access road, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A access road, together with the right to install, retain, use and maintain the Work No. 6A access road and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A access road, or interfere with or obstruct access from and to the Work No. 6A access road, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
66	<p>For and in connection with the Work No. 6B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass</p>

	<p>and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6B infrastructure, together with the right to install, retain, use and maintain the Work No. 6B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6B infrastructure, or interfere with or obstruct access from and to the Work No. 6B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 6B planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6B planting, together with the right to retain, maintain, inspect and replant the Work No. 6B planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6B planting, or interfere with or obstruct access from and to the Work No. 6B planting.</p>
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## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

### Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Drax Power (Generating Stations) Order 201\*;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Drax Power (Generating Stations) Order 201\*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

### Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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(a) 1973 c.26.



- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 19), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 26(3) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

## “SCHEDULE 2A

### COUNTER–NOTICE REQUIRING PURCHASE OF LAND

#### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting

Declarations) Act 1981) of the Drax Power (Generating Stations) Order 201\* in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201\* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must

determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—**(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

## SCHEDULE 10

Article 28

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 11**

<i>(1)</i> <i>Number of plot shown on the lands plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
11, 19, 21, 26, 26a, 28, 28a, 30, 30a, 31, 32, 35, 39, 41, 44, 45, 46, 48, 51, 52, 53, 54, 55	Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No. 7  Temporary use for the improvement, reinstatement, and retention of existing planting to facilitate construction of Work No. 7
60	Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work Nos. 6 and 7
64	Temporary use as vehicle, plant and machinery passing place as part of Work No. 14 to facilitate construction of Work Nos. 6 and 7

## SCHEDULE 11

Article 42

### PROCEDURE FOR DISCHARGE

#### Interpretation of Schedule 11

**1.** In this Schedule 11—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“relevant authority” means any authority or body named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

#### Applications made under requirements

**2.**—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of their decision on the application within—

- (a) a period of nine (9) weeks beginning with the day immediately following that on which the application is received by the authority;
- (b) a period of nine (9) weeks beginning with the day immediately following that on which further information has been supplied by the undertaker under paragraph (3); or
- (c) such period that is longer than the nine (9) week period in sub-paragraph (a) or (b) as may be agreed in writing by the undertaker and the relevant authority before the end of such nine week period.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement

then the application is to be taken to have been refused by the relevant authority at the end of that period.

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(a) 1971 c.80.

## Further information and consultation

**3.—**(1) In relation to any application to which this Schedule applies, the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within fourteen business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in subparagraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 3 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2(1)(b), paragraph 2(3) and paragraph 3.

## Fees

**4.—**(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012<sup>(a)</sup> (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the date on which it is received unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(1)(c) of this Schedule.

## Appeals

**5.—**(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(3)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) the relevant authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 2;
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or

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(a) S.I 2012/2920 as amended by S.I 2013/2153 and S.I 2014/357 and S/I 2014/2026.

- (d) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

(3) The appointment of the person pursuant to sub-paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the undertaker to the appointed person, the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.



## SCHEDULE 12

### PROTECTIVE PROVISIONS

Article 36

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);

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(a) 1989 c.29.

(b) 1991 c.56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c.37), and subsequently amended by section 10(1) and (2) of the Water Act 2014 (c.21).

(c) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

- (c) water undertaker within the meaning of the Water Industry Act 1991(a); and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary stopping up of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

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(a) 1991 c.56.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than twenty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection

with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.—**(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

**13.** The exercise of the powers of article 30 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

**14.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

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(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30).

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 43 (arbitration).

**15.** This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**16.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **PART 3**

### **FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

#### **Application**

**17.** For the protection of National Grid as referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### **Interpretation**

**18.** In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any conduits, cables, lines, towers, ducts, pipes or other apparatus or equipment belonging to or maintained by National Grid for the purposes of electricity transmission, storage and distribution and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“deeds of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 23(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s Guidance Note 6 ‘Avoidance of Danger from Overhead Lines’.

**19.** Except for paragraphs 20 (apparatus in streets subject to temporary prohibition or restriction), 25 (retained apparatus: protection of National Grid as Electricity Undertaker), 26 (expenses) and 27 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

**20.**—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any public right of way is stopped up under article 13 (permanent stopping up of public rights of way), if National Grid has any apparatus in the public right of way or accessed via that public right of way National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such public rights of way.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary stopping up of streets and public rights of way), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

#### **Protective works to buildings**

**21.**—(1) The undertaker, in the case of the powers conferred by article 35 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as previously described and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

## **Acquisition of land**

**22.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in paragraph 22(1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker and National Grid must, as is reasonably required to reconcile any such conflict and/or to avoid any such breach, enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must not be materially less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

**23.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed



save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**24.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights in land for the construction, use and maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration under paragraph 31 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), paragraph 31 shall apply.

### **Retained apparatus: protection of National Grid as Electricity Undertaker**

**25.**—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
  - (c) details of load bearing capacities of trenches;
  - (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
  - (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
  - (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
  - (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
  - (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) The undertaker must not commence any works to which sub-paragraph (1), (2) or (3) applies until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
  - (b) must not be unreasonably withheld or delayed.
- (6) In relation to a work to which sub-paragraphs (1), (2) or (3) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (6), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.
- (8) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (6) (except in an emergency).
- (9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 23 and 24 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—
- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
  - (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for development near overhead lines ENA TS 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

(13) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **Expenses**

**26.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under this Part of this paragraph 23(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with paragraph 31 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**27.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as previously described.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid pursuant to article 6(2)(a) of the Order or as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (3)(b) shall be subject to the full terms of this Part of this Schedule including this paragraph 27 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

## **Enactments and agreements**

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Co-operation**

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 23(2) and paragraph 25) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party's operations.

## **Access**

30. If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

31.—(1) Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

# **PART 4**

## **FOR THE PROTECTION OF NATIONAL GRID GAS PLC**

## **Application**

32. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

## **Interpretation**

33. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any conduits, cables, lines, towers, ducts, pipes or other apparatus or equipment belonging to or maintained by National Grid for the purposes of gas transmission, storage and distribution and includes any structure in which Apparatus is or will be lodged or which gives or will give access to Apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“deeds of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the promoter to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 38(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 38(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22).

**34.** Except for paragraphs 35 (apparatus in streets subject to temporary prohibition or restriction), 40 (retained apparatus: protection of National Grid as Gas Undertaker), 41 (expenses) and 42 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

**35.**—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any public right of way is stopped up under article 13 (permanent stopping up of public rights of way), if National Grid has any apparatus in the public right of way or accessed via that public right of way National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably

satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such public rights of way.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary stopping up of streets and public rights of way), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **Protective works to buildings**

**36.**—(1) The undertaker, in the case of the powers conferred by article 35 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of gas by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as previously described and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**37.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in paragraph 37(1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker and National Grid must, as is reasonably required to reconcile any such conflict and/or to avoid any such breach, enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must not be materially less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights,

agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 40 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 37(1)

### **Removal of apparatus**

**38.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 37 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 39(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**39.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights in land for the construction, use and maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter



shall be referred to arbitration under paragraph 46 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), paragraph 46 shall apply.

**Retained apparatus: protection of National Grid as Gas Undertaker**

**40.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan.

(2) The plan to be submitted to the undertaker pursuant to sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

(3) The undertaker must not commence any works to which sub-paragraph (1) and (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) and (2) must be executed only in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 38 and 39 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 38(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works

comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 42.

(13) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **Expenses**

**41.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 38(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with paragraph 46 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**42.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as previously described.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid pursuant to article 6(2)(a) of the Order or as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Part of this Schedule including this paragraph 42 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**43.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**44.** National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 38(2) and paragraph 40) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

### **Access**

**45.** If in consequence of the agreement reached in accordance with paragraph 37(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**46.—(1)** Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

## PART 5

### FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC AND NORTHERN POWERGRID LIMITED

**47.** For the protection of Northern Powergrid (Yorkshire) Plc and Northern Powergrid Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

**48.** In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by Northern Powergrid;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“Northern Powergrid” means Northern Powergrid (Yorkshire) Plc (Company No. 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF and Northern Powergrid Limited (Company No. 03271033) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

**49.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary stopping up of streets and public rights of way), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**50.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**51.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs 51(2) to 51(7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph 51(3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph 51(2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that

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(a) 1989 c.29.

effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 63.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 63, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph 51(2) or 51(3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph 51(5), if the undertaker gives notice in writing to Northern Powergrid that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(7) Nothing in sub-paragraph 51(6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**52.—**(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 63.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**53.—**(1) Not less than ninety days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 51(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph 53(1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 53(3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph 53(2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph 53(1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph 53(3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 47 to 52 apply as if the removal of the apparatus had been required by the undertaker under paragraph 51(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 53(1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 53(2) in so far as is reasonably practicable in the circumstances.

**54.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 51(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 51(1) having first decommissioned such equipment.

(2) There is to be deducted from any sum payable under sub-paragraph 54(1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph 54(1).

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 63 to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph 54(1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 54(3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 51(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph 54(1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Northern Powergrid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**55.**—(1) Subject to sub-paragraphs 55(2) and 55(3), if by reason or in consequence of the construction of any of the works referred to in paragraph 51(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph 55(1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**56.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**57.** Without prejudice to the generality of the protective provisions in this part of the Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this part of the Schedule.

**58.** Northern Powergrid and the undertaker will use their reasonable endeavours to agree the amount of any estimates submitted by the electricity undertaker under paragraph 57 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 63.

**59.** Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to the electricity undertaker pursuant to paragraph 51(1) for the benefit of its statutory undertaking.

**60.** If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

**61.** Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrates that the work invoiced has been completed in accordance with the agreed estimate.

**62.** The undertaker will not be responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 60 above.

**63.** Any difference under the provisions of this part of the Schedule, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing



agreement, to be appointed on the application of either party (after giving notice in writing to the other) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

## SCHEDULE 13

### DESIGN PARAMETERS

Requirement 6

### PART 1

#### TEMPORARY CONSTRUCTION PARAMETERS

**Table 12**

<i>Component</i>	<i>Work No.</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m AGL)</i>	<i>Maximum height (m AOD)</i>
Pedestrian Bridge	9A(iii)	33	10	11.5	17

### PART 2

#### UNIT X PARAMETERS

**Table 13**

<i>Component</i>	<i>Work No.</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m AGL)</i>	<i>Maximum height (m AOD)</i>
Turbine hall building	1A(ii)	87	23	28	34
Heat recovery steam generator building (up to two)	1A(iv)	55	29	49	55
Exhaust gas emission flue stacks (up to two)	1A(iv)	–	–	123	129
Bypass stack (up to two) (excluding supporting structures)	1A(v)	–	–	123	129
Transformers	1A(vi)	36	20	11	17
Gas turbine air inlet filter house	1A(vii)	26	27	35	41
Power control centre	1A(viii)	17	17	6	12
Turbine outage store building (up to two)	1A(xiv)	113	43	28	34

Fuel gas station (up to two)	1A(xvi)	26	19	7	13
Main pipe rack	1B(i)	600	12	25	31
Battery storage facility including any structure (where constructed in its entirety in a single stage being stage 1)	3A	180	60	10	16
Battery storage facility including any structure (where constructed in two stages being stage 1 and stage 2)	3A	90	60	10	16
Gas insulated switchgear banking building	4A	18	12	11	17
Control room building for gas insulated switchgear	4A	26	12	11	17
Gas receiving facility (GRF) Compound	5	85	85	10	16
Pig Trap Facility (Launching) Compound	6B	30	30	5	10
Minimum Offtake Connection	6A	30	30	5	10
Reinstatement of sludge lagoon	12A	82	55	—	—

**Table 14**

<i>Component</i>	<i>Work No.</i>	<i>Minimum height (m AGL)</i>	<i>Minimum height (m AOD)</i>
Exhaust gas emission flue stacks (up to two)	1A(iv)	122.5	128.5
Bypass Stack (up to two) (excluding supporting structures)	1A(v)	122.5	128.5

# PART 3

## UNIT Y PARAMETERS

**Table 15**

<i>Component</i>	<i>Work No.</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m AGL)</i>	<i>Maximum height (m AOD)</i>
Turbine hall building	2A(ii)	92	23	28	34
Heat recovery steam generator building (up to two)	2A(iv)	55	29	49	55
Exhaust gas emission flue stacks (up to two)	2A(iv)	–	–	123	129
Bypass stack (up to two)	2A(v)	–	–	123	129
Transformers	2A(vi)	36	20	11	17
Gas turbine air inlet filter house	2A(vii)	26	27	35	41
Power control centre	2A(viii)	17	17	6	12
Fuel gas station (up to two)	2A(xv)	26	19	7	13
Main pipe rack	2B(i)	1100	12	25	31
Battery storage facility including any structure (where constructed in two stages being stage 1 and stage 2)	3B	90	60	10	16
Gas insulated switchgear banking building or extension to 4A building	4B	18	12	11	17
Sludge lagoon (up to two)	12B	82	55	–	–
Cable Sealing End Compound	8B(ii)	35	28	20	26

**Table 16**

<i>Component</i>	<i>Work No.</i>	<i>Minimum height (m AGL)</i>	<i>Minimum height (m AOD)</i>
Exhaust gas emission flue stack (up to two)	2A(iv)	122.5	128.5
Bypass stack (up to two)	2A(v)	122.5	128.5

# SCHEDULE 14

Article 40

## DOCUMENTS AND PLANS TO BE CERTIFIED

**Table 17**

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
the access and rights of way plans	Key plan: 2.4	01	21.05.2018
	Sheet 2: 2.4	02	07.11.2018
	Sheet 3: 2.4	01	21.05.2018
	Sheet 4: 2.4	01	21.05.2018
	Sheet 5: 2.4	02	06.12.2018
	Sheet 6: 2.4	01	21.05.2018
	Sheet 7: 2.4	01	21.05.2018
	Sheet 8: 2.4	01	21.05.2018
	Sheet 9: 2.4	01	21.05.2018
	Sheet 10: 2.4	01	21.05.2018
	Sheet 11: 2.4	01	21.05.2018
	Sheet 12: 2.4	01	21.05.2018
	Sheet 13: 2.4	01	21.05.2018
	Sheet 14: 2.4	01	21.05.2018
	Sheet 15: 2.4	01	21.05.2018
	Sheet 16: 2.4	01	21.05.2018
	Sheet 17: 2.4	01	21.05.2018
	Sheet 18: 2.4	01	21.05.2018
	Sheet 19: 2.4	01	21.05.2018
	Sheet 20: 2.4	01	21.05.2018
	Sheet 21: 2.4	01	21.05.2018
	Sheet 22: 2.4	01	21.05.2018
	Sheet 23: 2.4	01	21.05.2018
the application guide	1.2	013	28.03.2019
the book of reference	4.3A	007	21.03.2019
the CHP statement	5.6	002	22.11.2018
the environmental statement	environmental statement volume 1: 6.1 (excluding chapter 3)	001 (excluding chapter 3)	29.05.2018 (excluding chapter 3)
	environmental statement volume 1: 6.1 (chapter 3)	002	30.01.2019
	environmental statement volume 2: 6.2 appendices 1.1, 1.2, 3.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 8.1, 8.2, 8.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.1, 10.2, 10.3, 10.4,	001	29.05.2018

	10.5, 11.1, 15.1, 16.1, 16.2, 16.3, 16.4, 17.1, 17.2, 17.3		
	appendix 9.10	003	30.01.2019
	appendices 5.1 and 5.2	003	13.12.2018
	environmental statement volume 3:	001	29.05.2018
	breeding bird survey: 8.4.2	001	18.10.2018
	reptile survey: 8.4.3	001	18.10.2018
	bat activity survey: 8.4.4	001	08.11.2018
	cover letter in relation to removal of stage 0, the site reconfiguration works, from the application removal of stage 0 mitigation review: 8.5.5	N/A	08.11.2018
	assessment of non-material amendments to proposed scheme: 8.4.8	001	08.11.2018
	errata – environmental statement (chapters 7, 8 and 11): 8.3.1	001	22.11.2018
	update to the cumulative assessment: 8.4.9	001	18.10.2018
			22.11.2018
the flood risk assessment	6.8	003	08.11.2018
the land plans	Key plan: 2.2	03	06.11.2019
	Sheet 2: 2.2	04	04.01.2019
	Sheet 3: 2.2	03	06.11.2018
	Sheet 4: 2.2	03	06.11.2018
	Sheet 5: 2.2	04	04.01.2019
	Sheet 6: 2.2	03	06.11.2018
	Sheet 7: 2.2	02	07.11.2018
	Sheet 8: 2.2	03	06.11.2018
	Sheet 9: 2.2	02	07.11.2018
the outline construction environmental management plan	6.5	005	21.03.2019
the outline construction traffic management plan	6.2.5.2	003	13.12.2018
the outline construction worker travel plan	6.2.5.1	003	13.12.2018
the outline public right of way management plan	8.4.6	002	20.02.2019

the outline landscape and biodiversity strategy	6.7	005	28.03.2019
the works plans	Key plan: 2.3A	04	13.12.2018
	Sheet 2: 2.3A	02	22.10.2018
	Sheet 3: 2.3A	01	16.05.2018
	Sheet 4: 2.3A	01	16.05.2018
	Sheet 5: 2.3A	02	22.10.2018
	Sheet 6: 2.3A	02	22.10.2018
	Sheet 7: 2.3A	02	22.10.2018
	Sheet 8: 2.3A	01	16.05.2018
	Sheet 9: 2.3A	01	16.05.2018
	Sheet 10: 2.3A	02	22.10.2018
	Sheet 11: 2.3A	02	22.10.2018
	Sheet 12: 2.3A	01	16.05.2018
	Sheet 13: 2.3A	01	16.05.2018
	Sheet 14: 2.3A	01	16.05.2018
	Sheet 15: 2.3A	01	16.05.2018
	Sheet 16: 2.3A	01	16.05.2018
	Sheet 17: 2.3A	01	16.05.2018
	Sheet 18: 2.3A	01	16.05.2018
	Sheet 19: 2.3A	02	22.10.2018
	Sheet 20: 2.3A	01	16.05.2018
	Sheet 21: 2.3A	02	22.10.2018
	Sheet 22: 2.3A	01	16.05.2018
	Sheet 23: 2.3A	01	16.05.2018
	Sheet 24: 2.3A	03	22.10.2018
	Sheet 25: 2.3A	02	22.10.2018
	Sheet 26: 2.3A	02	29.06.2018
	Sheet 27: 2.3A	01	16.05.2018
	Sheet 28: 2.3A	01	16.05.2018
	Sheet 29: 2.3A	01	16.05.2018
	Sheet 30: 2.3A	02	22.10.2018
	Sheet 31: 2.3A	02	22.10.2018
	Sheet 32: 2.3A	02	22.10.2018
	Sheet 33: 2.3A	01	16.05.2018
	Sheet 34: 2.3A	01	16.05.2018
	Sheet 35: 2.3A	01	09.05.2018
	Sheet 36: 2.3A	01	16.05.2018
	Sheet 37: 2.3A	02	22.10.2018
	Sheet 38: 2.3A	01	16.05.2018
	Sheet 39: 2.3A	01	16.05.2018
	Sheet 40: 2.3A	01	16.05.2018
	Sheet 41: 2.3A	01	16.05.2018
	Sheet 42: 2.3A	01	16.05.2018



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Drax Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain up to two gas fired electricity generating stations and up to two battery storage energy facilities. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 40 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Selby District Council Access Selby, Selby District Council, Market Cross Shopping Centre, Selby, YO8 4JS.

## **APPENDIX E: THE ALTERNATIVE RECOMMENDED DCO FOR UNIT X ONLY**

**201\* No.**

**INFRASTRUCTURE PLANNING**

**The Drax Power (Generating Stations) Order 201\***

*Made* - - - - - [\*\*\*] 201\*

*Coming into force* - - - - - [\*\*\*] 201\*

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An application under section 37 of the Planning Act 2008<sup>(a)</sup> (“the 2008 Act”) has been made to the Secretary of State for an order granting development consent.

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>(b)</sup>. The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

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(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20). Part 7 amended by S.I. 2017/16.

(b) S.I. 2010/103, amended by S.I. 2012/635.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127 of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Drax Power (Generating Stations) Order 201\* and comes into force on [\*\*\*] 201\*

#### **Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2008 Act” means the Planning Act 2008(h);

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(i);

“access and rights of way plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

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(a) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/834, S.I. 2018/942.

(b) 1961 c.33.

(c) 1965 c.56.

(d) 1980 c.66.

(e) 1981 c.66.

(f) 1990 c.8.

(g) 1991 c.22.

(h) 2008 c.29.

(i) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755 and S.I. 2017/572.

“apparatus” has the same meaning as in Part 3 of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

“application guide” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) to this Order which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carbon capture readiness reserve space” means the area comprised in Work No. 10 shown on the works plans;

“carriageway” has the same meaning as in the 1980 Act;

“the CHP statement” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the CHP statement for the purposes of this Order;

“commence” means the carrying out of a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the carrying out of the permitted preliminary works (except where stated to the contrary) and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of numbered work 1A (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions, in relation to numbered work 1A, are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“date of Work No. 1A full commissioning” means the date on which the commissioning of numbered work 1A is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 4(2) of Schedule 2 to this Order;

“Drax Power Limited” means Drax Power Limited (Company No. 04883589) whose registered office is at Drax Power Station, Selby, North Yorkshire YO8 8PH;

“Electricity Acts” means the Electric Lighting Act 1909(a), the Electricity (Supply) Act 1919(b), and the Electricity Act 1989(c);

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the environmental statement” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the flood risk assessment” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each work number on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that any such activities do not give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“this Order” means the Drax Power (Generating Stations) Order 201\*;

“Order land” means the land delineated and marked as such on the land plans;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“the outline construction environmental management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“the outline construction traffic management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is

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(a) 1909 c.34 as repealed by the Electricity Act 1989.

(b) 1919 c.100 as repealed by the Electricity Act 1989.

(c) 1989 c.29. Part 1 has been amended by S.I. 2017/493 and Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c.27) and sections 136 and 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20). Section 7A(10D) and Section 56FB(2) have both been amended by the Smart Meters Act 2018. Section 64 has been amended by article 24(c) of the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506), section 108 of, paragraphs 24 and 38 of part 2 of Schedule 6 to, and Schedule 8 to the Utilities Act 2000 (c.27), sections 44, 89, 102, 143, 147, 180 and 197 of, paragraphs 3 and 15 of Schedule 19 to, and Part 1 of Schedule 23 to, the Energy Act 2000 (c.20), section 79 of, and paragraph 5 of Schedule 8 to, the Climate Change Act 2008 (c.27), section 72 of, and paragraph 5 of Schedule 8 to, the Energy Act 2011 (c.16), regulation 48 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), articles 2 and 13 of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), section 26 of, and paragraphs 30 and 43 of part 1 of Schedule 6 to, the Enterprise and Regulatory Reform Act 2013 (c.24), and regulation 5 of the Electricity and Gas (Internal Markets) Regulations (S.I. 2014/3332).



certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“the outline construction worker travel plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction worker travel plan for the purposes of this Order;

“the outline landscape and biodiversity strategy” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and biodiversity strategy for the purposes of this Order;

“the outline public right of way management plan” means the document of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline public right of way management plan for the purposes of this Order;

“the outline surface water drainage strategy” means the outline surface water drainage strategy in section 6.0 of the flood risk assessment;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“permitted preliminary works” means all or any of (1) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery; (2) above ground site preparation for temporary facilities for the use of contractors; (3) the provision of temporary means of enclosure and site security for construction; (4) the temporary display of site notices or advertisements; and (5) site clearance (including vegetation removal, demolition of existing buildings and structures);

“Planning Acts” means the Town and Country Planning Act 1947(b), the Town and Country Planning Act 1962(c), the Town and Country Planning Act 1971(d), and the 1990 Act;

“plot” means the plots listed in the book of reference and as shown on the land plans;

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order and “requirement” means any one of the requirements;

“stage 1” means numbered works 1, 3A, 4A, 5, 6, 7, 8A, 9, 11, 12A, 13 and 14 and as further described in the environmental statement;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and includes a public communications provider defined by section 151(1) of the Communications Act 2003(e);

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“street works” means the works listed in article 9(1);

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Drax Power Limited or the person who has the benefit of this Order in accordance with articles 6 and 7;

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(a) 1981 c.67.

(b) 1947 c.51 as repealed by the Town and Country Planning Act 1962 and Planning (Consequential Provisions) Act 1990 (c.11).

(c) 1962 c.38 as repealed by the Town and Country Planning Act 1971 and Planning (Consequential Provisions) Act 1990 (c.11).

(d) 1971 c.78 as repealed by the Planning (Consequential Provisions) Act 1990 (c.11).

(e) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans of that name identified in Table 17 of Schedule 14 (documents and plans to be certified) and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) to this Order and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in Schedule 1 (authorised development) to this Order and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1D inclusive and the same principle applies to such numbered works that contain letters.

(5) The expression “includes” is to be construed without limitation.

(6) All areas described in square metres in the book of reference are approximate.

(7) References to any statutory body include that body’s successor bodies as from time to time have jurisdiction over the authorised development.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by the Order**

**3.—**(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work may only be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

#### **Maintenance of authorised development**

**4.—**(1) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

#### **Operation of authorised development**

**5.—**(1) The undertaker is authorised to use and operate the generating stations comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

## **Benefit of the Order**

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to—

- (a) Work No. 6A in relation to which this Order has effect for the benefit of the undertaker and NGG; and
- (b) Work No 8 in relation to which this Order has effect for the benefit of the undertaker and NGET.

## **Consent to transfer benefit of the Order**

7.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is—
  - (i) the holder of a licence under section 6 of the Electricity Act 1989;
  - (ii) in relation only to a transfer or lease of Work No. 6 or Work No. 7 the holder of a licence under section 7 of the Gas Act 1986(a); or
  - (iii) in relation to a transfer or lease of any works within a highway a highway authority responsible for the highways within the Order land; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

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(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27) and Part 1 of Schedule 23 to the Energy Act 2004 (c.20). There are other amendments to the section that are not relevant to this Order.

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

### **Application and modification of statutory provisions**

**8.—**(1) The provisions of the Neighbourhood Planning Act 2017<sup>(a)</sup> insofar as they relate to temporary possession of land under articles 28 (temporary use of land for carrying out the authorised development) and 29 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Acts prior to that date is hereby excluded and does not apply but only insofar as such approval, grant, permission, authorisation or agreement relates to the Order limits and is inconsistent with the authorised development and anything approved under the requirements.

(3) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991<sup>(b)</sup>; and
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.

## **PART 3**

### **STREETS**

#### **Street works**

**9.—**(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) construct a bridge over the street; and

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<sup>(a)</sup> 2017 c.20.

<sup>(b)</sup> 1991 c.59 as amended by the Flood and Water Management Act 2010 (c.29) and words substituted by S.I 2009/1307.

- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) (b) (c) (d) and (e).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers), 51(1) (prohibition of unauthorised street works) of the 1991 Act and section 176 (restrictions on construction of bridges over highways) of the 1980 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article, “bridge” has the same meaning as in section 176(8) of the 1980 Act.

### **Power to alter layout, etc., of streets**

**10.**—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 4 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing place(s).

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Construction and maintenance of new or altered means of access**

**11.**—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (those parts of the access to be maintained by the street authority) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 5 (those works to restore the temporary accesses which will be maintained by the street authority) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had

taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

### **Temporary stopping up of streets and public rights of way**

**12.—**(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily stop up, prohibit the use of, restrict the use of, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, prohibit the use of, restrict the use of, alter or divert the streets specified in column (2) of the table in Part 1 of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of the table in Part 1 of Schedule 6 and the public rights of way specified in column (2) of the table in Part 2 of Schedule 6 (public rights of way to be temporarily stopped up) to the extent specified in column (3) of the table in Part 2 of Schedule 6 (public rights of way to be temporarily stopped up).

(4) The undertaker must not temporarily stop up, prohibit the use of, restrict the use of, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) Without prejudice to the requirements of paragraph (4), the undertaker must not exercise the powers in paragraphs (1) and (3) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention to do so to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(8) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3) of this article has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (a) (road traffic contraventions subject to civil enforcement).

(9) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

### **Permanent stopping up of public rights of way**

**13.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the public rights of way specified in column (2) of Schedule 7 (public rights of way to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (3) of that Schedule.

(2) No public right of way specified in columns (2) and (3) of Schedule 7 (public rights of way to be permanently stopped up) is to be wholly or partly stopped up under this article unless—

- (a) it is necessary for the undertaker to take such action in order to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so; and
- (b) the new public right of way to be substituted for it, which is specified in column (4) of that table in Schedule 7, has been completed in accordance with the details approved under requirement 9 and is open for use; or
- (c) a temporary alternative route for the public as could have used the public right of way to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the public right of way, until the completion and opening of the new public right of way in accordance with sub-paragraph (b).

(3) Where a public right of way has been stopped up under this article—

- (a) all rights of way over or along the public right of way so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the public right of way as is bounded on both sides by land owned by the undertaker.

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(a) 2004 c.18.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Access to works**

**14.** The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 of Schedule 4 (streets subject to permanent alteration of layout);
- (b) form and lay out the temporary means of access in the location specified in Part 2 of Schedule 4 (streets subject to temporary alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

**15.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the construction and maintenance of the structure of any bridge or tunnel carrying a street (including any footbridge over a street);
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access); and/or
- (f) the adoption by a street authority which is the highway authority of works—
  - (i) undertaken on a street which is existing publicly maintainable highway; and/or
  - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## **PART 4**

### **SUPPLEMENTAL POWERS**

#### **Discharge of water**

**16.—**(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.



(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(a)</sup> (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(b)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Authority to survey and investigate the land**

**17.—**(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and

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<sup>(a)</sup> 1991 c.56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), sections 32(2) and 99 of the Water Act 2003 (c.37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c.29).

<sup>(b)</sup> 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes are to be made under this article—
  - (a) in land located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Removal of human remains**

- 18.—**(1) In this article “the specified land” means the Order land.
- (2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.
  - (3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—
    - (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
    - (b) displaying a notice in a conspicuous place on or near to the specified land.
  - (4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.
  - (5) At any time within fifty-six days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.
  - (6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—
    - (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
    - (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).
  - (7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.
  - (8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.
  - (9) If—
    - (a) within the period of fifty-six days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

- (b) such notice is given and no application is made under paragraph (7) within fifty-six days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of fifty-six days; or
- (c) within fifty-six days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (11) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the address mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**19.—**(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article 22 (compulsory acquisition of rights), article 25 (acquisition of subsoil only), article 28 (temporary use of land for carrying out the authorised development) and article 30 (statutory undertakers).

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(a) 1857 c.81. Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2. There are other amendments to this Act which are not relevant to this Order.

### **Statutory authority to override easements and other rights**

**20.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

### **Time limit for exercise of authority to acquire land compulsorily**

**21.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 28 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights etc**

**22.**—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights as are specified in column 2 of the table in that Schedule.

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land), schedule 2A (counter-notice requiring purchase of land not in notice to treat) (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and

the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(5) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

### **Private rights**

**23.**—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry); or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights over land or the creation of rights over land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

- 24.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of act) for subsection (2) there is substituted—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in Section 5A” substitute—
- “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201\*.”
- (7) In section 6 (notices after execution of declaration) for subsection (1)(b) there is substituted—
- “(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008,”
- (8) In section 7 (constructive notice to treat) in subsection (1)(a), “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “But see article 25(3) (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201\* which excludes the acquisition of subsoil only from this Schedule.”
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act as modified by article 26 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**25.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights etc) as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153 (4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

**26.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201\*”.

(3) In section 11A (powers of entry: further notices of entry)—

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 (time limit for exercise of authority to acquire land compulsorily) of the Drax Power (Generating Stations) Order 201\*”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201\*, which excludes the acquisition of subsoil only from this Schedule”
- (b) after paragraph 29 insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for carrying out the authorised development) or article 29 (temporary use of land for maintaining the authorised

development) or article 35 (protective works to buildings) of the Drax Power (Generating Stations) Order 201\*.”.

### **Rights under or over streets**

**27.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**28.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table in that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

- (b) remove any buildings, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (2) of the table in Schedule 10 (land of which temporary possession may be taken), or any mitigation works.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—



- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of Work No. 1A full commissioning; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of Work No. 1A full commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or debris removed under this article.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired) under article 22 (compulsory acquisition of rights etc.); or
- (b) acquiring any right in the subsoil of any part of the Order land under article 25 (acquisition of subsoil only) or article 27 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10 (land of which temporary possession may be taken).

### **Temporary use of land for maintaining the authorised development**

**29.—**(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of Work No. 1A full commissioning except where the authorised development is landscaping where “the maintenance period” means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping is completed.

### **Statutory undertakers**

**30.** Subject to the provisions of Schedule 12 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land; and
- (c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

### **Apparatus and rights of statutory undertakers in streets**

**31.** Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc. of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (temporary stopping up of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

**32.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 30 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

### **Compulsory acquisition of land – incorporation of the mineral code**

**33.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” substitute “the undertaker”.

## **PART 6**

### **OPERATIONS**

### **Felling or lopping of trees and removal of hedgerows**

**34.**—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2) remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) The Undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(a).

### **Protective works to buildings**

**35.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with completion of the authorised development.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and

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(a) S.I. 1997/1160.

- (b) within the period of five years beginning with the date of completion of the part of the authorised development carried out in the vicinity of the building it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

## PART 7

### MISCELLANEOUS AND GENERAL

#### **Protective provisions**

36. Schedule 12 (protective provisions) has effect.

#### **Application of landlord and tenant law**

37.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

## **Operational land for purposes of the 1990 Act**

**38.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land).

## **Defence to proceedings in respect of statutory nuisance**

**39.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## **Certification of plans etc**

**40.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 17 of Schedule 14 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

## **Service of notices**

**41.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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(a) 1990 c.43. Section 82 was amended by section 103 to the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(a)</sup> (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

#### **Procedure in relation to certain approvals etc**

**42.—**(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

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(a) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

(2) Schedule 11 (procedure for discharge) is to have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

### **Arbitration**

**43.** Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

### **Guarantees in respect of payment of compensation**

**44.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 19 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights etc);
- (c) article 23 (private rights);
- (d) article 27 (rights under or over streets);
- (e) article 28 (temporary use of land for carrying out the authorised development);
- (f) article 29 (temporary use of land for maintaining the authorised development); and
- (g) article 30 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Name*

Date

Department of Business, Energy and Industrial Strategy



# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the County of North Yorkshire and the District of Selby a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act all as set out in this Schedule.

The nationally significant infrastructure project comprises up to two generating stations with a combined gross electrical output capacity of up to 2,000 megawatts comprising all or any of the work numbers in this schedule or any part of any work number in this schedule—

**Work No. 1** – an electricity generating station (Unit X) fuelled by natural gas and with a gross electrical output capacity of up to 1,800 megawatts including—

- (a) **Work No. 1A** – a gas generating unit—
  - (i) up to two gas turbines able to operate in both combined cycle and open cycle modes;
  - (ii) one turbine hall building for the gas turbine(s) within this Work;
  - (iii) up to two heat recovery steam generators;
  - (iv) up to two heat recovery steam generator buildings and up to two exhaust gas emission flue stacks for the heat recovery steam generator(s) within this Work;
  - (v) up to two bypass stacks;
  - (vi) transformers;
  - (vii) gas turbine air inlet filter house;
  - (viii) power control centre;
  - (ix) feed water pump house building;
  - (x) water supply and pipelines;
  - (xi) water storage tanks and pipelines;
  - (xii) emergency diesel generator and diesel fuel tank for safe shut-down of the plant;
  - (xiii) switch gear and ancillary equipment;
  - (xiv) up to two turbine outage store buildings;
  - (xv) 400 kilovolt electrical underground cables and telemetry and electrical protection auxiliary cabling connecting to Work No. 4A; and
  - (xvi) a new main fuel gas station comprising up to two individual fuel gas stations comprising for each—
    - (aa) a gas receiving area;
    - (bb) gas treatment and control facilities including filters, preheating and liquid collection tanks; and
    - (cc) other auxiliary control cabinets
- (b) **Work No. 1B**
  - (i) a new main pipe rack carrying main steam and condensate, and auxiliary cabling and pipework between the heat recovery steam generator(s) and the existing steam turbine;
  - (ii) piling for foundations to accommodate the pipe rack; and
  - (iii) modifications to the existing steam turbine, generating plant and turbine hall building

- (c) **Work No. 1C** – a new underground gas pipeline across New Road connecting Work No. 1A to Work No. 5
- (d) **Work No. 1D** – in connection with and in addition to Work Nos. 1A, 1B and 1C—
  - (i) works connecting Work Nos. 1A, 1B and 1C to existing equipment and utilities;
  - (ii) ground raising and ground preparation works;
  - (iii) site lighting infrastructure, including perimeter lighting columns;
  - (iv) internal roadways, car parking, pedestrian network, cycle parking and hardstanding;
  - (v) site drainage and waste management infrastructure, including relocation of existing infrastructure as required;
  - (vi) electricity (including a 132 kilovolt electricity cable across New Road connecting Work No. 1A to Work No.5), water, wastewater and telecommunications and other services; and
  - (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

**Work No. 2** – work number not used.

**Work No. 3** – battery storage facility including—

- (a) **Work No. 3A**—
  - (i) battery energy storage cells with converters;
  - (ii) a structure protecting the battery energy storage cells;
  - (iii) transformers;
  - (iv) switch gear and ancillary equipment;
  - (v) electrical underground cable connecting to Work No. 1A;
  - (vi) ground raising and ground preparation works;
  - (vii) a flood mitigation channel;
  - (viii) site lighting infrastructure, including lighting columns; and
  - (ix) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (b) **Work No. 3B** – work number not used.

**Work No. 4** – new gas insulated switchgear banking buildings including—

- (a) **Work No. 4A**—
  - (i) a building containing gas insulated switchgear and other associated switch gear and ancillary equipment;
  - (ii) a building containing control equipment;
  - (iii) up to 3 sets of cable sealing ends; and
  - (iv) ground raising and ground preparation works
- (b) **Work No. 4B** – work number not used.

**Work No. 5** – a natural gas receiving facility compound including—

- (a) pipeline inspection gauge (PIG) trap receiving equipment;
- (b) isolation valves, inline valves, metering, heat exchangers, filtering, pressure regulation equipment, pipework;
- (c) electricity supply kiosks and associated cabling;
- (d) emergency generator;
- (e) electrical pre-heaters and electrical compressors housed in a building;

- (f) up to two boiler houses with a total installed capacity of 7.2 megawatts and each with up to two stacks;
- (g) control and instrumentation kiosk(s) and associated wiring;
- (h) creation of a permanent access from New Road including permanent road surface and kerb stones, signing and road markings works, drainage, car parking, fencing and other incidental works;
- (i) security infrastructure, including cameras, lighting (including perimeter lighting columns), stock proof fencing and perimeter fencing;
- (j) a new underground gas pipeline;
- (k) external cooling system;
- (l) ground raising and ground preparation works; and
- (m) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

**Work No. 6** – above ground gas installation including—

(a) **Work No. 6A**—

- (i) above ground installation (also referred to as a minimum offtake connection compound) containing a minimum offtake connection comprising remotely operable valves, control and instrumentation kiosk(s), pipework and electrical supply kiosk(s);
- (ii) security infrastructure, including cameras, lighting (including perimeter lighting columns), stock proof fencing and perimeter fencing;
- (iii) ground raising and ground preparation works;
- (iv) site drainage including new outfall to Dickon Field Drain, new culvert and waste management infrastructure;
- (v) electricity and telecommunications connections and other services;
- (vi) underground gas pipeline connecting to Work No. 6B;
- (vii) creation of a permanent access from Rusholme Lane including permanent road surface and kerb stones, signing and road markings works, car parking, drainage, fencing and other incidental works;
- (viii) creation of a permanent access from the access in Work No.6A (vii) into the field to the south of Dickon Field Drain including permanent road surface and kerb stones, signing and road markings works, drainage, fencing and other incidental works;
- (ix) creation of a culvert on Dickon Field Drain; and
- (x) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

(b) **Work No. 6B**—

- (i) above ground installation containing a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control valves, isolation valves, control and instrumentation kiosk(s), pipework and electricity supply kiosk(s);
- (ii) security infrastructure, including cameras, lighting (including perimeter lighting columns), car parking, stock proof fencing and perimeter fencing;
- (iii) ground raising and ground preparation works;
- (iv) site drainage and waste management infrastructure;
- (v) electricity and telecommunications connections and other services;
- (vi) below ground sacrificial anode pit; and
- (vii) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments

(c) **Work No. 6C** – (in connection with Work No. 6A) temporary construction laydown area

- (d) **Work No. 6D** – (in connection with Work No. 6B) temporary construction laydown area and creation of up to two construction access routes from Rusholme Lane

**Work No. 7** – a gas pipeline including—

- (a) **Work No. 7A**—
  - (i) an underground gas pipeline connection and telemetry cabling, 3km in length and up to 600 millimetres nominal diameter, connecting Work No. 5 to Work No. 6B;
  - (ii) pipeline field marker posts and cathodic protection test/ transformer rectifier unit(s);
  - (iii) below ground drainage works;
  - (iv) works required in order to protect existing utilities infrastructure;
  - (v) tree and hedge removal; and
  - (vi) hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments
- (b) **Work No. 7B** – temporary construction laydown area for gas pipeline

**Work No. 8** – electrical connection including—

- (a) **Work No. 8A** – up to 400 kilovolt underground electrical connection between Work No. 4A and the existing 400 kilovolt National Grid substation busbars—
  - (i) electrical underground cables and telemetry and electrical protection auxiliary cabling;
  - (ii) one set of cable sealing ends;
  - (iii) insulated switchgear and overhead busbars;
  - (iv) trenching works;
  - (v) site drainage;
  - (vi) security and site lighting infrastructure, including cameras, perimeter fencing and lighting columns; and
  - (vii) hard and soft landscaping including ecological mitigation.
- (b) **Work No. 8B** – work number not used.

**Work No. 9** – temporary construction laydown areas including—

- (a) **Work No. 9A** – temporary construction laydown area—
  - (i) areas of hardstanding;
  - (ii) car parking;
  - (iii) pedestrian bridge including ducts for the carrying of electricity and other utility services;
  - (iv) site and welfare offices and workshops;
  - (v) security infrastructure, including cameras, perimeter fencing and lighting;
  - (vi) site drainage and waste management infrastructure (including sewerage); and
  - (vii) electricity, water, waste water and telecommunications connections.
- (b) **Work No. 9B** – a temporary construction laydown area—
  - (i) areas of hardstanding;
  - (ii) security infrastructure, including cameras, perimeter fencing and lighting;
  - (iii) up to two means of access;
  - (iv) site drainage and waste management infrastructure (including sewerage);
  - (v) car parking; and
  - (vi) electricity, water, waste water and telecommunications connections.

**Work No. 10** – carbon capture readiness including—

- (i) **Work No. 10A** – carbon capture readiness reserve space;
- (ii) **Work No. 10B** – diversions for public rights of way 35.47/1/1 and 35.47/6/1; and
- (iii) **Work No. 10C** – hard and soft landscaping including tree planting, ecological mitigation, temporary and permanent fencing and other boundary treatments.

**Work No. 11** – retained and enhanced landscaping including—

- (a) soft landscaping including planting;
- (b) landscape and biodiversity enhancement measures; and
- (c) security fencing, gates, boundary treatment and other means of enclosure.

**Work No. 12** – decommissioning and demolition of one sludge lagoon and construction of one replacement sludge lagoon including—

- (a) **Work No. 12A**—
  - (i) decommissioning and demolition of one existing sludge lagoon; and
  - (ii) reinstatement of one existing out of service sludge lagoon—
    - (aa) bund walls;
    - (bb) underground pipework, valves and sluices; and
    - (cc) access roads.
- (b) **Work No. 12B** — work number not used.

**Work No. 13** – removal of existing 132 kilovolt overhead line and removal of two 132 kilovolt pylons and foundations.

**Work No. 14** – construction of temporary passing place on Rusholme Lane.

In connection with and in addition to Work Nos. 1–14, further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position of, such services and utilities connections;
- (c) hard standing and hard landscaping;
- (d) biodiversity measures;
- (e) closed circuit television cameras and columns and other security measures;
- (f) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (g) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (h) vehicle parking and cycle storage facilities;
- (i) accesses, roads and pedestrian and cycle routes;
- (j) tunnelling, boring and drilling works,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they

are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2

### REQUIREMENTS

Article 3

#### **Interpretation**

**1.** In this Schedule—

“construction laydown area” means the land on which numbered work 9 is authorised to be carried out as shown on the works plans;

“pipeline area” means the land on which numbered works 5, 6 and 7 are authorised to be carried out as shown on the works plans;

“power station area” means the land on which numbered works 1, 3, 4, 8, 12 and 13 are authorised to be carried out as shown on the works plans;

“shut down period” means a period after physical construction works have finished for the day during which activities including changing out of work gear, the departure of workers, post-works briefings and closing and securing the site take place; and

“start up period” means a period prior to physical construction works starting for the day during which activities including the opening up of the site, the arrival of workers, changing into work wear and pre-work briefings take place.

#### **Commencement of the authorised development**

**2.** The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

#### **Phasing of the authorised development**

**3.—**(1) No part of the authorised development is to commence until a written scheme setting out the phasing of construction of numbered works 1 and 3 has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the phasing as detailed in chapter 3 (site and project description) of the environmental statement and must include details of timescales for the reinstatement or restoration of the temporary construction laydown areas comprised in numbered works 6C, 6D, 7B and 9, in line with the outline landscape and biodiversity strategy.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

#### **Notice of start of commissioning and notice of date of full commissioning**

**4.—**(1) Notice of the intended start of commissioning of numbered work 1A must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(2) Within seven days of the completion of the commissioning of numbered work 1A, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

#### **Requirement for written approval**

**5.** Where under any of these requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

## **Approved details and amendments to them**

6.—(1) With respect to the documents certified under article 40 (certification of plans etc), the parameters specified in Tables 12, 13 and 14 of Schedule 13 (design parameters) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## **Detailed design approval**

7.—(1) In relation to any part of the authorised development comprised in numbered work 1, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (d) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads, vehicle parking, cycle parking and routes, and pedestrian facilities and routes.

(2) In relation to any part of the authorised development comprised in numbered work 3A, no development of that part must commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures including any cladding or shield to enclose or protect the battery energy storage cells;
- (b) finished floor levels;
- (c) flood mitigation channel;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads.

(3) In relation to any part of the authorised development comprised in numbered work 4A, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(4) In relation to any part of the authorised development comprised in numbered work 5, no development of that part must commence until details of the following for that part have been



submitted to and, in respect of sub-paragraph (e) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) security infrastructure; and
- (e) the internal vehicular access, circulation roads and vehicle parking.

(5) In relation to any part of the authorised development comprised in numbered work 6, no development of that part must commence until details of the following for that part have been submitted to and, in respect of sub-paragraph (f) after consultation with the highway authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) the size of the culvert in numbered work 6A(xi);
- (e) security infrastructure; and
- (f) the internal vehicular access, circulation roads and vehicle parking.

(6) In relation to the pedestrian bridge in numbered work 9A, no development of any part of the pedestrian bridge must commence until the undertaker has submitted to the highway authority for approval detailed design and safety drawings of the pedestrian bridge.

(7) The authorised development must be carried out in accordance with the relevant parameters in Schedule 13 (design parameters).

(8) Numbered works 1, 3A, 4A, 5 and 6 must be carried out in accordance with the approved details under this requirement.

### **Provision of landscape and biodiversity mitigation**

**8.**—(1) No part of the numbered works comprising stage 1 must be commenced until, for those numbered works, a written strategy which is substantially in accordance with the outline landscape and biodiversity strategy and chapter 9 (biodiversity) of the environmental statement (as each is relevant for that numbered work) has been submitted to and, after consultation with North Yorkshire County Council, approved by the relevant planning authority.

(2) The strategy or strategies submitted and approved pursuant to sub-paragraph (1) must include details of all proposed hard and soft landscaping works and ecological mitigation measures (as applicable for the relevant numbered work) and, where applicable,—

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) hard surfacing materials;
- (d) an implementation timetable;
- (e) annual landscaping and biodiversity management and maintenance;
- (f) the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of the ecological mitigation measures; and
- (g) an explanation for how the design of the numbered works comprised in the stage, which is the subject of the strategy, has sought to maximise the biodiversity net gain of the authorised development as far as practicable.

(3) Any shrub or tree planted as part of the approved strategy that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

(4) The strategy or strategies must be implemented and maintained in accordance with the implementation timetable in the strategy submitted and approved pursuant to sub-paragraph (1).

### **Public rights of way diversions**

**9.**—(1) Numbered work 7 of the authorised development must not commence until, for that numbered work, a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the access and rights of way plans for that numbered work and which is substantially in accordance with the outline public rights of way management plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(3) No public right of way specified in columns (2) and (3) of the table in Schedule 7 (public rights of way to be permanently stopped up) is to be wholly or partly stopped up under article 13 (permanent stopping up of public rights of way) of this Order until the detail of the materials for the form and lay out of the surface of the new public right of way to be substituted for it, which is specified in column (4) of the table in Schedule 7, have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(4) The details submitted and approved pursuant to sub-paragraph (3) must be implemented as approved.

### **External lighting during construction and operation**

**10.**—(1) No part of the numbered works comprising stage 1 must commence until a written scheme for the temporary external lighting to be installed for the purposes of construction for that numbered work has been submitted to and approved by the relevant planning authority.

(2) The scheme or schemes submitted and approved pursuant to sub-paragraph (1) of this requirement must be substantially in accordance with the principles set out in chapter 9 (biodiversity) and chapter 10 (landscape and visual amenity) of the environmental statement and the objectives set out in the outline construction environmental management plan and must include details of the temporary external lighting to be installed for the purposes of the construction of the relevant numbered works.

(3) Prior to the date of Work No. 1A full commissioning a written scheme for the permanent external lighting to be installed for the purposes of operation for the numbered works comprising stage 1 must be submitted to and approved by the relevant planning authority.

(4) The scheme submitted and approved pursuant to sub-paragraph (3) of this requirement must be substantially in accordance with the principles set out in chapter 9 (biodiversity) and chapter 10 (landscape and visual amenity) of the environmental statement and must include details of the permanent external lighting to be installed for the purposes of the operation of the relevant numbered works.

(5) The schemes must be implemented as approved.

### **Highway accesses and passing place during construction**

**11.**—(1) Each of numbered works 5, 6, 7, 9B and 14 of the authorised development must not commence until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent or temporary means of access and passing place between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any temporary means of access and passing place after construction (where reinstatement is to take place) has, for that numbered

work, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses and passing place approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant numbered work (other than the accesses and passing place), and where temporary, reinstated prior to the date that is no later than 12 months after the date of Work No. 1A full commissioning.

### **Means of enclosure**

**12.—**(1) Each of numbered works 5, 6A, 6B, 7 and 9 of the authorised development must not commence until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites have, for that numbered work, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites must remain securely fenced at all times during construction and commissioning of the authorised development in accordance with the details approved pursuant to sub-paragraph (1).

(3) Prior to the date of Work No. 1A full commissioning—

- (a) details of any proposed permanent means of enclosure for each of numbered works 5, 6A and 6B must be submitted to and approved by the relevant planning authority; and
- (b) the approved permanent means of enclosure must be completed.

### **Surface water drainage**

**13.—**(1) Each of numbered works 1, 3A, 5 and 6 of the authorised development must not commence until a surface water drainage scheme for that numbered work has been submitted to, and after consultation with the Environment Agency, lead local flood authority and relevant internal drainage board, approved by the relevant planning authority.

(2) The details approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of numbered works 1, 3A, 5 and 6 of the authorised development.

(3) The surface water drainage scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the principles set out in the outline surface water drainage strategy in respect of numbered works 1, 3A, 5 and 6.

(4) The details approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of numbered works 1, 3A, 5 and 6 of the authorised development.

### **Flood risk mitigation**

**14.—**(1) The authorised development must be carried out in accordance with the flood risk assessment.

(2) In relation to any part of the authorised development comprised in numbered work 3A, no development of that part must commence until the flood mitigation channel comprised in that numbered work has been completed.

### **Ground conditions**

**15.—**(1) No part of the numbered works comprising stage 1 must commence (including permitted preliminary works comprising demolition of existing structures, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions only) until a written strategy in relation to the identification and remediation of any risks associated with the contamination of the Order limits associated with that numbered work has been submitted to and approved by the relevant planning authority.

(2) The strategy submitted and approved pursuant to sub-paragraph (1) must—

- (a) include a site investigation scheme, based on the preliminary risk assessment set out in chapter 11 (ground conditions and contamination) of the environmental statement and providing details of the detailed risk assessment to be carried out for the receptors on or in the vicinity of the Order limits that may be affected by the authorised development;
- (b) set out how the outcomes of the site investigation scheme and detailed risk assessment carried out pursuant to (a) above will be reported, and provide for the submission and approval by the relevant planning authority of an options appraisal and remediation strategy based on such outcomes and providing details of any remediation measures required and how they are to be carried out; and
- (c) include a verification plan identifying the data to be collected in order to demonstrate that the remediation measures set out in the options appraisal and remediation strategy prepared pursuant to (b) above have been completed and are effective, and any requirement for long term monitoring of pollutant linkages, maintenance or arrangements for contingency action.

(3) Prior to the date of Work No. 1A full commissioning a report prepared substantially in accordance with the verification plan prepared pursuant to sub-paragraph (2)(c) and approved pursuant to sub-paragraph (1) must be submitted to and approved by the relevant planning authority.

(4) If, during the carrying out of the authorised development on—

- (a) the power station area;
- (b) the pipeline area; or
- (c) the construction laydown area

contamination not previously identified is found to be present on such area(s) no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the area(s) on which the contamination has been found until a remediation strategy detailing how such contamination must be dealt with has been submitted to and approved by the relevant planning authority.

(5) The authorised development must be carried out in accordance with the strategy approved pursuant to sub-paragraph (1) and any remediation strategy approved pursuant to sub-paragraph (4).

## **Archaeology**

**16.—**(1) Each of numbered works 5, 6, 7, 9B and 14 of the authorised development must not commence (including permitted preliminary works comprising intrusive archaeological surveys only) until a written scheme of investigation has, for that numbered work, been submitted to and, after consultation with North Yorkshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with chapter 8 (cultural heritage) of the environmental statement.

(3) The scheme must—

- (a) identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified; and
- (b) provide details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found.

(4) Without prejudice to the generality of sub-paragraph (3), the scheme for numbered work 6 must provide details of a strip, map and record excavation for that numbered work.

(5) Without prejudice to the generality of sub-paragraph (3), the scheme for numbered works 5, 7, 9B and 14 must provide details of archaeological monitoring to be undertaken during construction of those numbered works.

(6) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority in consultation with North Yorkshire County Council.

### **Construction environmental management plan**

**17.**—(1) No part of the authorised development must commence (including permitted preliminary works comprising site clearance only), until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the outline construction environmental management plan (as applicable for the authorised development) and must detail how the outcomes of the ground investigations carried out pursuant to requirement 15 have been taken into account in the preparation of the plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

### **Construction traffic management plan**

**18.**—(1) No part of the authorised development must commence, save for numbered works 11, 13 and 14, until a construction traffic management plan has, for that part, been submitted to and, after consultation with Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction traffic management plan (as applicable for the authorised development).

(3) Notices must be erected and maintained by the undertaker throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(4) The plan must be implemented as approved.

### **Construction worker travel plan**

**19.**—(1) No part of the authorised development must commence, save for numbered works 11, 13 and 14, until a construction worker travel plan has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the relevant part of the outline construction worker travel plan (as applicable for the authorised development).

(3) The plan must be implemented as approved.

### **Construction hours**

**20.**—(1) Construction work relating to the authorised development must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on Sundays, bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) are carried out within existing buildings or buildings constructed as part of the authorised development;
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) for numbered work 9 and at the corresponding numbered area shown on the works plans a start up period from 0600 to 0700 and a shut down period from 1900 to 2000 Monday to Friday and a start up period from 0600 to 0700 and a shut down period from 1300 to 1400 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

### **Control of noise – operation**

**21.**—(1) The noise emitted from the top of the stacks at source in numbered work 1A must not exceed a sound power level of 98 dB(A).

(2) Prior to the date of Work No. 1A full commissioning a written scheme for the monitoring of noise emitted from the top of the stacks at source during operation of numbered work 1A must be submitted to and approved by the relevant planning authority.

(3) The schemes submitted under sub-paragraph (2) must be implemented as approved.

### **Carbon capture readiness reserve space**

**22.** Following commencement of the authorised development and until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the carbon capture readiness reserve space; or
- (b) do anything, or allow anything to be done or to occur,

which may reasonably be expected to diminish the undertaker’s ability, within two years of such action or occurrence, to prepare the carbon capture readiness reserve space for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

### **Carbon capture readiness monitoring report**

**23.**—(1) The undertaker must make a report (‘carbon capture readiness monitoring report’) to the Secretary of State—

- (a) on or before the date on which three months have passed from the date of Work No. 1A full commissioning; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has complied with requirement 22—

- (a) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and
- (b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement 22 over the next two years.

(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.

### **Air Safety**

**24.** No part of the authorised development must commence until the undertaker has submitted confirmation to the relevant planning authority that it has provided details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes.

### **Local liaison committee**

**25.—**(1) The authorised development must not commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a ‘local liaison committee’).

(2) The undertaker must invite the relevant planning authority and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of stage 1 of the authorised development until the date of Work No. 1A full commissioning unless otherwise agreed by the majority of the members of the local liaison committee; and
- (c) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

### **Decommissioning environmental management plan**

**26.—**(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;

- (e) the phasing of any restoration works; and
  - (f) a timetable for the implementation of the scheme.
- (4) The plan must be implemented as approved.

### **Decommissioning traffic management plan**

**27.**—(1) Within 12 months of the date that the undertaker decides to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for its approval, after consultation with Highways England and the highway authority, a decommissioning traffic management plan for that part.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan submitted under sub-paragraph (1) in relation to such works.

(3) The plan submitted and approved must include details of—

- (a) route diversions; and
- (b) routing of abnormal loads and HGVs.

(4) The plan must be implemented as approved.

### **Combined heat and power**

**28.**—(1) On the date that is 12 months after the date of Work No. 1A full commissioning (or such other date that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a report (“the CHP review”) updating the CHP statement.

(2) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist within 15 kilometres of the authorised development for the export of heat from numbered work 1A at the time of submission of the CHP review; and
- (b) include a list of actions (if any) that the undertaker is reasonably required to take (without material additional cost to the undertaker) to increase the potential for export of heat from numbered work 1A.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(4) On each date during the operation of numbered work 1A that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority (or such shorter timeframe that is agreed with the environment agency having regard to any condition relating to combined heat and power imposed on any environmental permit issued by the environment agency in relation to the operation of the authorised development), the undertaker must submit to the environment agency for its approval a revised CHP review.

(5) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under sub-paragraph (4) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).



## SCHEDULE 3

Article 9

### STREETS SUBJECT TO STREET WORKS

**Table 1**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the District of Selby	New Road	Works for the provision of a new permanent access to Work No.5 on the east side of New Road between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	New Road	Works for the installation and maintenance of Work Nos. 1C and 1D in the street between the points marked AZ and AY and AJ and AI on sheet 3 of the access rights of way plans
In the District of Selby	New Road	Works for the provision of a new temporary pedestrian bridge in Work No. 9A over New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights of way plans
In the District of Selby	Carr Lane / Wren Hall Lane	Widening and improvement works to the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No. 7 on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way

		plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No. 7 on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Works for the installation and maintenance of Work No. 7 in the street between the points marked U and V on sheet 5 of the access rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No. 7 on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No. 7 on the west side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Works for the installation and maintenance of Work No. 7 in the street between the points marked AQ and W on sheet 5 of the access rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No. 7 on the north side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No. 6D and Work No. 7 on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Works for the installation and maintenance of Work No. 7 in the street between the points marked BY and Z on sheet 8

		of the access rights of way plans
In the District of Selby	Rusholme Lane	Works for the provision of a new permanent access to Work No. 6 on the south side of Rusholme Lane between the points marked AW and AV on sheet 8 of the access rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a passing place (Work No. 14) on the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans
In the District of Selby	A645/New Road	Street works at the A645/New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	Street works to the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	Street works to the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	Street works at the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans

## SCHEDULE 4

Article 10

### STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

#### PART 1

#### PERMANENT ALTERATION OF LAYOUT

**Table 2**

<i>(1) Area</i>	<i>(2) Streets subject to alteration of layout</i>	<i>(3) Description of alteration</i>
In the District of Selby	New Road	Works for the provision of a new permanent access to Work No. 5 on the east side of New Road between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Works for the provision of a new permanent access to Work No. 6 on the south side of Rusholme Lane between the points marked AW and AV on sheet 8 of the access rights of way plans

#### PART 2

#### TEMPORARY ALTERATION OF LAYOUT

**Table 3**

<i>(1) Area</i>	<i>(2) Streets subject to alteration of layout</i>	<i>(3) Description of alteration</i>
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	Works for the provision of a new construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights

		of way plans
In the District of Selby	Carr Lane / Wren Hall Lane	Widening and improvement works to the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No.7 on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	Widening and works for the provision of a new construction access to Work No.7 on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No.7 on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	Widening and works for the provision of a new construction access to Work No.7 on the west side of Main Road at the point marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No.7 on the north side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a new construction access to Work No.6D and Work No.7 on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	Widening and works for the provision of a passing place

		(Work No.14) on the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans
In the District of Selby	A645 / New Road	Street works at the A645 / New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of Selby	A645 / New Road	Works in the street to remove street furniture between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	Aldam Dock	Works in the street to remove street furniture from the exit of Aldam Dock at the points marked AH and BR on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Normandy Way	Works in the street to remove street furniture between the points marked BO and BS on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Stanhope Street / Coronation Street	Works in the street to remove street furniture between the points marked BN and BM on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Coronation Street / Boothferry Road	Works in the street to remove street furniture between the points marked BM and BL on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Boothferry Road	Works in the street to remove street furniture between the points marked BL and BK on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	Boothferry Road/Airmyn Road (A614) / Rawcliffe Road (A614)	Works in the street to remove street furniture between the points marked BK, BT and BU on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	Street works to the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans

In the District of East Riding of Yorkshire	A161 roundabout	Works in the street to remove street furniture between the points marked BH and BI on sheet 22 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161	Works in the street to remove street furniture between the points marked BI and BJ on sheets 22 and 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout / A614	Works in the street to remove street furniture between the points marked AF and BE on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	M62 carriageway	Works in the street to remove safety barrier between the points marked BD and AG on sheets 14, 19, 20 and 21 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	Street works to the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	Works in the street to remove street furniture between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	Street works to the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	Works in the street to remove street furniture between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	Street works at the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	Works in the street to remove street furniture between the points marked BF and BG on sheet 13 of the access and rights of way plans

## SCHEDULE 5

### ACCESS

Article 11

### PART 1

#### THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

**Table 4**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	That part of the access in the area cross hatched in blue between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the access in the area cross hatched in blue between the points marked AW and AV on sheet 8 of the access and rights of way plans

### PART 2

#### THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET AUTHORITY

**Table 5**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of Selby	New Road	That part of the access in the area cross hatched in red between the points marked AI and AJ on sheet 3 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the access in the area cross hatched in red between the points marked AW and AV on sheet 8 of the access and rights of way plans



## PART 3

### THOSE WORKS TO RESTORE THE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

**Table 6**

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of relevant part of access</i>
In the District of Selby	New Road	That part of the temporary construction access to Work No. 9B on the east side of New Road between the points marked C and D on sheet 2 of the access and rights of way plans
In the District of Selby	New Road	That part of the temporary construction access to Work No. 9B on the east side of New Road between the points marked AT and AU on sheet 2 of the access and rights of way plans
In the District of Selby	Carr Lane / Wren Hall Lane	That part of the junction at Carr Lane and Wren Hall Lane between the points marked AM and AN on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	That part of the temporary construction access on the east side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Wren Hall Lane	That part of the temporary construction access on the west side of Wren Hall Lane between the points marked V and U on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	That part of the temporary construction access on the east side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Main Road	That part of the temporary construction access on the west side of Main Road between the points marked AQ and W on sheet 5 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the new construction access on the north side of Rusholme Lane

		between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the new construction access on the south side of Rusholme Lane between the points marked Y and Z on sheet 8 of the access and rights of way plans
In the District of Selby	Rusholme Lane	That part of the west side of Rusholme Lane between the points marked AT and AS on sheet 9 of the access and rights of way plans
In the District of Selby	A645 / New Road	That part of the A645 / New Road roundabout between the points marked AB and BV on sheet 4 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	That part of the A161 roundabout between the points marked BO and BP on sheet 23 of the access and rights of way plans
In the District of East Riding of Yorkshire	A161 roundabout	That part of the A161 roundabout between the points marked BH and BI on sheet 22 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout / M62	That part of the A614 roundabout between the points marked AE and BC on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 roundabout junction with Glews Services	That part of the A614 roundabout with Glews Services between the points marked BA and BB on sheet 14 of the access and rights of way plans
In the District of East Riding of Yorkshire	A614 / A645	That part of the A614 / A645 roundabout between the points marked BF and BG on sheet 13 of the access and rights of way plans

## SCHEDULE 6

Article 12

### STREETS AND PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

#### PART 1

#### STREETS TO BE TEMPORARILY STOPPED UP ETC

**Table 7**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of temporary stopping up</i>
In the District of Selby	New Road	Temporary closure of that part of the street shown between points AB and E on sheets 2, 3 and 4 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of Selby	Wren Hall Lane	Temporary closure of that part of the street shown between points AO and AP on sheet 5 of the access and rights of way plans to install and facilitate the construction of Work No. 7
In the District of Selby	Main Road	Temporary closure of that part of the street shown between points W and X on sheet 5 of the access and rights of way plans to install and facilitate the construction of Work No. 7
In the District of Selby	Rusholme Lane	Temporary closure of that part of the street shown between points Y and AV on sheet 8 of the access and rights of way plans to install and facilitate the construction of Work Nos. 6 and 7
In the District of Selby	A645	Temporary closure of that part of the street shown between points AB and AC on sheets 10 and 11 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A645	Temporary closure of that part of the street shown between points AC and BF on sheets 11, 12 and 13 of the access and

		rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A614	Temporary closure of that part of the street shown between points BG and AE on sheets 13 and 14 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	M62	Temporary closure of that part of the street shown between points BX and AG on sheets 14, 15, 16, 17, 18, 19, 20 and 21 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A161	Temporary closure of that part of the street shown between points AF and AH on sheets 22 and 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Aldam Dock	Temporary closure of that part of the street shown between points AX and BN on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Stanhope Street / Coronation Street	Temporary closure of that part of the street shown between points BN and BM on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	Coronation Street / Boothferry Road	Temporary closure of that part of the street shown between points BM and BL on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads

In the District of East Riding of Yorkshire	Boothferry Road	Temporary closure of that part of the street shown between points BL and BK on sheet 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads
In the District of East Riding of Yorkshire	A614 / A161	Temporary closure of that part of the street shown between BT and AF on sheets 22 and 23 of the access and rights of way plans to ensure the safe and unhindered passage of heavy goods vehicles and abnormal indivisible loads

## PART 2

### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP ETC

**Table 8**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Description of temporary stopping up etc</i>
In the District of Selby	Public footpath 35.47/4/1	Between the points marked M and N on sheet 5 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/5/1	Between the points marked O and P on sheet 5 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/9/1	Between the points marked Q and R on sheet 6 of the access and rights of way plans
In the District of Selby	Public footpath 35.49/2/1	Between the points marked S and T on sheet 6 of the access and rights of way plans

## SCHEDULE 7

Article 13

### PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP

**Table 9**

<i>(1) Area</i>	<i>(2) Public right of way to be stopped up</i>	<i>(3) Extent of stopping up</i>	<i>(4) Replacement public right of way</i>
In the District of Selby	Public footpath 35.47/1/1	Between the points marked J and K on sheet 2 of the access and rights of way plans	Between the points marked J and L on sheet 2 of the access and rights of way plans
In the District of Selby	Public footpath 35.47/6/1	Between the points marked G and H on sheet 2 of the access and rights of way plans	Between the points marked G and I on sheet 2 of the access and rights of way plans

## LAND IN WHICH ONLY NEW RIGHTS ETC MAY BE ACQUIRED

**Interpretation****1. In this Schedule—**

“Work Nos. 1C and 1D infrastructure” means any works or development comprised within Work Nos. 1C and 1D in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 1C and 1D on the works plans;

“Work No. 5 infrastructure” means any works or development comprised within Work No. 5 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans;

“Work No. 6 infrastructure” means any works or development comprised within Work No. 6 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans;

“Work No. 6A access road” means any works or development comprised within Work No. 6A(viii), including any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans;

“Work No. 6A infrastructure” means any works or development comprised within Work No. 6A(ii), including any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans;

“Work No. 6A planting” means the hard and soft landscaping comprised within Work No. 6A(viii), including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 6A on the works plans;

“Work No. 6B infrastructure” means any works or development comprised within Work No. 6B(ii), including any other necessary works or development permitted within the area delineated as Work No. 6B on the works plans;

“Work No. 6B planting” means the hard and soft landscaping comprised within Work No. 6B(vii), including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 6B on the works plans;

“Work No. 7 infrastructure” means any works or development comprised within Work No. 7 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 7 on the works plans;

“Work No. 7A planting” means the hard and soft landscaping comprised within Work No. 7A(vi) in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 7A on the works plans;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans;

“Work No. 8 planting” means the hard and soft landscaping comprised within Work No. 8A(vi) in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 8A on the works plans;

“Work No. 9A(iii) infrastructure” means any works or development comprised within Work No. 9A(iii) in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9A(iii) on the works plans;

“Work No. 10C planting” means the hard and soft landscaping comprised within Work No. 10C in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 10C on the works plans;

“Work No. 11 planting” means the retained and enhanced landscaping comprised within Work No. 11 in schedule 1, including any other necessary works or development permitted in respect of such landscaping within the area delineated as Work No. 11 on the works plans;

“Work No. 13 infrastructure” means any works or development comprised within Work No. 13 in schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 13 on the works plans.

**Table 10**

(1) <i>Number of plot shown on the land plans</i>	(2) <i>Rights etc. which may be acquired</i>
5	<p>For and in connection with the Work No. 8 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 8 planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 8 planting, together with the right to retain, maintain, inspect and replant the Work No. 8 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 planting, or interfere with or obstruct access from and to the Work No. 8 planting.</p> <p>For and in connection with the Work No. 13 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the removal of the Work No. 13 infrastructure.</p>



8a	<p>For and in connection with the Work No. 10C planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 10C planting, together with the right to retain, maintain, inspect and replant the Work No. 10C planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 10C planting, or interfere with or obstruct access from and to the Work No. 10C planting.</p> <p>For and in connection with the Work No. 11 planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 11 planting, together with the right to retain, maintain, inspect and replant the Work No. 11 planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 11 planting, or interfere with or obstruct access from and to the Work No. 11 planting.</p>
9a	<p>For and in connection with the Work Nos. 1C and 1D infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work Nos. 1C and 1D infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C and 1D infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 1C and 1D infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C and 1D infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
12	<p>For and in connection with the Work Nos. 1C and 1D infrastructure and the Work No. 5</p>

	<p>infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work Nos. 1C and 1D infrastructure and the Work No. 5 infrastructure, together with the right to install, retain, use and maintain the Work Nos. 1C and 1D infrastructure and the Work No. 5 infrastructure, and a right of support for it, and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 1C and 1D infrastructure and the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work Nos. 1C and 1D infrastructure and the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain,</p>
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	maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.
14	For and in connection with the Work No. 9A(iii) infrastructure within an air-space corridor of up to 10m in width, the right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the installation, use, maintenance and removal of the Work No. 9A(iii) infrastructure, together with the right to install, retain, use, maintain and remove the Work No. 9A(iii) infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9A(iii) infrastructure, or interfere with or obstruct access from and to the Work No. 9A(iii) infrastructure.
18, 24, 25, 56	<p>For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain,</p>

	maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.
27, 27a, 29, 29a, 33, 37, 40, 42, 43, 47, 49, 50, 59	For and in connection with the Work No. 7 infrastructure within a corridor of up to 15m in width, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7 infrastructure, together with the right to install, retain, use and maintain the Work No. 7 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7 infrastructure, or interfere with or obstruct access from and to the Work No. 7 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
58, 61, 67	For and in connection with the Work No. 7A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 7A planting, together with the right to protect, retain, maintain, inspect and replant the Work No. 7A planting and existing planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A planting or existing planting, or interfere with or obstruct access from and to the Work No. 7A planting or existing planting.
65	For and in connection with the Work No. 6A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A infrastructure, together with the right to install, retain, use and maintain the Work No. 6A infrastructure and a right of support for it, along with the right to

	<p>prevent any works on or uses of the land which may interfere with or damage the Work No. 6A infrastructure, or interfere with or obstruct access from and to the Work No. 6A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 6A planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6A planting, together with the right to retain, maintain, inspect and replant the Work No. 6A planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A planting, or interfere with or obstruct access from and to the Work No. 6A planting.</p> <p>For and in connection with the Work No. 6A access road, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A access road, together with the right to install, retain, use and maintain the Work No. 6A access road and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A access road, or interfere with or obstruct access from and to the Work No. 6A access road, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
66	<p>For and in connection with the Work No. 6B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6B infrastructure,</p>

	<p>together with the right to install, retain, use and maintain the Work No. 6B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6B infrastructure, or interfere with or obstruct access from and to the Work No. 6B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p> <p>For and in connection with the Work No. 6B planting, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 6B planting, together with the right to retain, maintain, inspect and replant the Work No. 6B planting, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6B planting, or interfere with or obstruct access from and to the Work No. 6B planting.</p>
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## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

### Compensation enactments

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.**—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

**3.**—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Drax Power (Generating Stations) Order 201\*;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Drax Power (Generating Stations) Order 201\*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

### Application of Part 1 of the 1965 Act

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**5.**—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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(a) 1973 c.26.

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 19), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 26(3) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

## “SCHEDULE 2A

### COUNTER–NOTICE REQUIRING PURCHASE OF LAND

#### **Introduction**

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting



Declarations) Act 1981) of the Drax Power (Generating Stations) Order 201\* in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Drax Power (Generating Stations) Order 201\* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must

determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—**(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

## SCHEDULE 10

Article 28

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 11**

<i>(1)</i> <i>Number of plot shown on the lands plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
11, 19, 21, 26, 26a, 28, 28a, 30, 30a, 31, 32, 35, 39, 41, 44, 45, 46, 48, 51, 52, 53, 54, 55	Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work No. 7  Temporary use for the improvement, reinstatement, and retention of existing planting to facilitate construction of Work No. 7
60	Temporary use as laydown, construction compound, construction use and accesses required to facilitate construction of Work Nos. 6 and 7
64	Temporary use as vehicle, plant and machinery passing place as part of Work No. 14 to facilitate construction of Work Nos. 6 and 7

## SCHEDULE 11

Article 42

### PROCEDURE FOR DISCHARGE

#### Interpretation of Schedule 11

**1.** In this Schedule 11—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“relevant authority” means any authority or body named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

#### Applications made under requirements

**2.—**(1) Where an application has been made to the relevant authority for any consent, agreement or approval required or contemplated by any of the provisions of this Order (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of their decision on the application within—

- (a) a period of nine (9) weeks beginning with the day immediately following that on which the application is received by the authority;
- (b) a period of nine (9) weeks beginning with the day immediately following that on which further information has been supplied by the undertaker under paragraph (3); or
- (c) such period that is longer than the nine (9) week period in sub-paragraph (a) or (b) as may be agreed in writing by the undertaker and the relevant authority before the end of such nine week period.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement

then the application is to be taken to have been refused by the relevant authority at the end of that period.

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(a) 1971 c.80.

## Further information and consultation

**3.—**(1) In relation to any application to which this Schedule applies, the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within fourteen business days of receipt of the application.

(4) In the event that the relevant authority does not give notification as specified in subparagraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 3 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2(1)(b), paragraph 2(3) and paragraph 3.

## Fees

**4.—**(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012<sup>(a)</sup> (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the date on which it is received unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(1)(c) of this Schedule.

## Appeals

**5.—**(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(3)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) the relevant authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 2;
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or

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(a) S.I 2012/2920 as amended by S.I 2013/2153 and S.I 2014/357 and S/I 2014/2026.

- (d) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

(3) The appointment of the person pursuant to sub-paragraph (2)(b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, notify the appeal parties in writing specifying the further information required and the date by which the information is to be submitted and the appointed person must make any notification and set the date for the receipt of such further information having regard to the timescales in sub-paragraph (2).

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the undertaker to the appointed person, the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(6) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(10) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (Requirements) as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

## SCHEDULE 12

### PROTECTIVE PROVISIONS

Article 36

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(b);
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);

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(a) 1989 c.29.

(b) 1991 c.56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c.37), and subsequently amended by section 10(1) and (2) of the Water Act 2014 (c.21).

(c) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).



- (c) water undertaker within the meaning of the Water Industry Act 1991(a); and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary stopping up of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

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(a) 1991 c.56.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than twenty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection

with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.—**(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

**13.** The exercise of the powers of article 30 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

**14.—**(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

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(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30).

undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 43 (arbitration).

**15.** This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**16.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **PART 3**

### **FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

#### **Application**

**17.** For the protection of National Grid as referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

#### **Interpretation**

**18.** In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any conduits, cables, lines, towers, ducts, pipes or other apparatus or equipment belonging to or maintained by National Grid for the purposes of electricity transmission, storage and distribution and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“deeds of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 23(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s Guidance Note 6 ‘Avoidance of Danger from Overhead Lines’.

**19.** Except for paragraphs 20 (apparatus in streets subject to temporary prohibition or restriction), 25 (retained apparatus: protection of National Grid as Electricity Undertaker), 26 (expenses) and 27 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

**20.**—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any public right of way is stopped up under article 13 (permanent stopping up of public rights of way), if National Grid has any apparatus in the public right of way or accessed via that public right of way National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such public rights of way.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary stopping up of streets and public rights of way), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **Protective works to buildings**

**21.**—(1) The undertaker, in the case of the powers conferred by article 35 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as previously described and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

## **Acquisition of land**

**22.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in paragraph 22(1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker and National Grid must, as is reasonably required to reconcile any such conflict and/or to avoid any such breach, enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must not be materially less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

**23.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed

save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**24.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights in land for the construction, use and maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter shall be referred to arbitration under paragraph 31 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), paragraph 31 shall apply.

### **Retained apparatus: protection of National Grid as Electricity Undertaker**

**25.**—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;



- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
  - (c) details of load bearing capacities of trenches;
  - (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
  - (e) a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;
  - (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
  - (g) assessment of earth rise potential if reasonably required by National Grid's engineers;
  - (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) The undertaker must not commence any works to which sub-paragraph (1), (2) or (3) applies until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8);
  - (b) must not be unreasonably withheld or delayed.
- (6) In relation to a work to which sub-paragraphs (1), (2) or (3) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (1), (2) or (3) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraphs (2), (3) or (6), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.
- (8) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1), (2), (3) or (6) (except in an emergency).
- (9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 23 and 24 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—
- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
  - (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for development near overhead lines ENA TS 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

(13) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **Expenses**

**26.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under this Part of this paragraph 23(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with paragraph 31 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**27.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as previously described.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid pursuant to article 6(2)(a) of the Order or as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section (3)(b) shall be subject to the full terms of this Part of this Schedule including this paragraph 27 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

## **Enactments and agreements**

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Co-operation**

29. National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 23(2) and paragraph 25) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party's operations.

## **Access**

30. If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

31.—(1) Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

# **PART 4**

## **FOR THE PROTECTION OF NATIONAL GRID GAS PLC**

## **Application**

32. For the protection of National Grid as referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

## **Interpretation**

33. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any conduits, cables, lines, towers, ducts, pipes or other apparatus or equipment belonging to or maintained by National Grid for the purposes of gas transmission, storage and distribution and includes any structure in which Apparatus is or will be lodged or which gives or will give access to Apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development;

“deeds of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the promoter to submit for the undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“National Grid” means National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the promoter under paragraph 38(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the promoter under paragraph 38(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22).

**34.** Except for paragraphs 35 (apparatus in streets subject to temporary prohibition or restriction), 40 (retained apparatus: protection of National Grid as Gas Undertaker), 41 (expenses) and 42 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, this Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid in streets subject to temporary prohibition or restriction**

**35.—**(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any public right of way is stopped up under article 13 (permanent stopping up of public rights of way), if National Grid has any apparatus in the public right of way or accessed via that public right of way National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the promoter will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably

satisfactory to the specified undertaker in respect of such apparatus and access to it prior to the stopping up of any such public rights of way.

(2) Notwithstanding the temporary prohibition or restriction under the powers of article 12 (temporary stopping up of streets and public rights of way), National Grid shall be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

### **Protective works to buildings**

**36.**—(1) The undertaker, in the case of the powers conferred by article 35 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of gas by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as previously described and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

### **Acquisition of land**

**37.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order the undertaker must not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in paragraph 37(1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker and National Grid must, as is reasonably required to reconcile any such conflict and/or to avoid any such breach, enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must not be materially less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights,

agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 40 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 37(1).

### **Removal of apparatus**

**38.**—(1) If, in the exercise of the agreement reached in accordance with paragraph 37 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to National Grid to their satisfaction (taking into account paragraph 39(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

**39.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to National Grid facilities and rights in land for the construction, use and maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter

shall be referred to arbitration under paragraph 46 and, the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2), paragraph 46 shall apply.

#### **Retained apparatus: protection of National Grid as Gas Undertaker**

**40.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan.

(2) The plan to be submitted to the undertaker pursuant to sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) intended maintenance regimes; and
- (g) details of any ground monitoring scheme (if required in accordance with National Grid's "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22".)

(3) The undertaker must not commence any works to which sub-paragraph (1) and (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) and (2) must be executed only in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 38 and 39 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 38(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works



comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 42.

(13) The plans submitted to National Grid by the undertaker pursuant to sub-paragraph (1) must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **Expenses**

**41.—**(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 38(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with paragraph 46 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## **Indemnity**

**42.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as previously described.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid pursuant to article 6(2)(a) of the Order or as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or under article 7 of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-section 3(b) shall be subject to the full terms of this Part of this Schedule including this paragraph 42 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering their representations.

### **Enactments and agreements**

**43.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Co-operation**

**44.** National Grid and the undertaker must each use their best endeavours to co-ordinate with the other party on the timing and method of execution of any works carried out under the Order or this Part of this Schedule (including, for the avoidance of doubt, pursuant to paragraph 38(2) and paragraph 40) in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the other party’s operations.

### **Access**

**45.** If in consequence of the agreement reached in accordance with paragraph 37(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**46.—(1)** Any difference under this Part of this Schedule, unless otherwise provided for, shall be referred to and settled in arbitration by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

## PART 5

### FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC AND NORTHERN POWERGRID LIMITED

**47.** For the protection of Northern Powergrid (Yorkshire) Plc and Northern Powergrid Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

**48.** In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by Northern Powergrid;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“Northern Powergrid” means Northern Powergrid (Yorkshire) Plc (Company No. 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF and Northern Powergrid Limited (Company No. 03271033) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

**49.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary stopping up of streets and public rights of way), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**50.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**51.—**(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs 51(2) to 51(7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph 51(3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph 51(2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that

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(a) 1989 c.29.

effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 63.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 63, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph 51(2) or 51(3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph 51(5), if the undertaker gives notice in writing to Northern Powergrid that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(7) Nothing in sub-paragraph 51(6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**52.—**(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 63.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**53.—**(1) Not less than ninety days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 51(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph 53(1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 53(3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph 53(2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph 53(1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph 53(3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 47 to 52 apply as if the removal of the apparatus had been required by the undertaker under paragraph 51(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 53(1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 53(2) in so far as is reasonably practicable in the circumstances.

**54.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 51(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 51(1) having first decommissioned such equipment.

(2) There is to be deducted from any sum payable under sub-paragraph 54(1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph 54(1).

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 63 to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph 54(1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph 54(3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 51(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph 54(1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Northern Powergrid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**55.**—(1) Subject to sub-paragraphs 55(2) and 55(3), if by reason or in consequence of the construction of any of the works referred to in paragraph 51(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph 55(1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**56.** Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**57.** Without prejudice to the generality of the protective provisions in this part of the Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this part of the Schedule.

**58.** Northern Powergrid and the undertaker will use their reasonable endeavours to agree the amount of any estimates submitted by the electricity undertaker under paragraph 57 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 63.

**59.** Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to the electricity undertaker pursuant to paragraph 51(1) for the benefit of its statutory undertaking.

**60.** If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

**61.** Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrates that the work invoiced has been completed in accordance with the agreed estimate.

**62.** The undertaker will not be responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 60 above.

**63.** Any difference under the provisions of this part of the Schedule, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing

agreement, to be appointed on the application of either party (after giving notice in writing to the other) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.



## SCHEDULE 13

### DESIGN PARAMETERS

Requirement 6

### PART 1

#### TEMPORARY CONSTRUCTION PARAMETERS

**Table 12**

<i>Component</i>	<i>Work No.</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m AGL)</i>	<i>Maximum height (m AOD)</i>
Pedestrian Bridge	9A(iii)	33	10	11.5	17

### PART 2

#### UNIT X PARAMETERS

**Table 13**

<i>Component</i>	<i>Work No.</i>	<i>Maximum length (m)</i>	<i>Maximum width (m)</i>	<i>Maximum height (m AGL)</i>	<i>Maximum height (m AOD)</i>
Turbine hall building	1A(ii)	87	23	28	34
Heat recovery steam generator building (up to two)	1A(iv)	55	29	49	55
Exhaust gas emission flue stacks (up to two)	1A(iv)	–	–	123	129
Bypass stack (up to two) (excluding supporting structures)	1A(v)	–	–	123	129
Transformers	1A(vi)	36	20	11	17
Gas turbine air inlet filter house	1A(vii)	26	27	35	41
Power control centre	1A(viii)	17	17	6	12
Turbine outage store building (up to two)	1A(xiv)	113	43	28	34

Fuel gas station (up to two)	1A(xvi)	26	19	7	13
Main pipe rack	1B(i)	600	12	25	31
Battery storage facility including any structure	3A	180	60	10	16
Gas insulated switchgear banking building	4A	18	12	11	17
Control room building for gas insulated switchgear	4A	26	12	11	17
Gas receiving facility (GRF) Compound	5	85	85	10	16
Pig Trap Facility (Launching) Compound	6B	30	30	5	10
Minimum Offtake Connection	6A	30	30	5	10
Reinstatement of sludge lagoon	12A	82	55	—	—

**Table 14**

<i>Component</i>	<i>Work No.</i>	<i>Minimum height (m AGL)</i>	<i>Minimum height (m AOD)</i>
Exhaust gas emission flue stacks (up to two)	1A(iv)	122.5	128.5
Bypass Stack (up to two) (excluding supporting structures)	1A(v)	122.5	128.5

**Table 15**

Table not used.

**Table 16**

Table not used.

# SCHEDULE 14

Article 40

## DOCUMENTS AND PLANS TO BE CERTIFIED

**Table 17**

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
the access and rights of way plans	Key plan: 2.4	01	21.05.2018
	Sheet 2: 2.4	02	07.11.2018
	Sheet 3: 2.4	01	21.05.2018
	Sheet 4: 2.4	01	21.05.2018
	Sheet 5: 2.4	02	06.12.2018
	Sheet 6: 2.4	01	21.05.2018
	Sheet 7: 2.4	01	21.05.2018
	Sheet 8: 2.4	01	21.05.2018
	Sheet 9: 2.4	01	21.05.2018
	Sheet 10: 2.4	01	21.05.2018
	Sheet 11: 2.4	01	21.05.2018
	Sheet 12: 2.4	01	21.05.2018
	Sheet 13: 2.4	01	21.05.2018
	Sheet 14: 2.4	01	21.05.2018
	Sheet 15: 2.4	01	21.05.2018
	Sheet 16: 2.4	01	21.05.2018
	Sheet 17: 2.4	01	21.05.2018
	Sheet 18: 2.4	01	21.05.2018
	Sheet 19: 2.4	01	21.05.2018
	Sheet 20: 2.4	01	21.05.2018
	Sheet 21: 2.4	01	21.05.2018
	Sheet 22: 2.4	01	21.05.2018
	Sheet 23: 2.4	01	21.05.2018
the application guide	1.2	013	28.03.2019
the book of reference	9.4	001	28.03.2019
the CHP statement	5.6	002	22.11.2018
the environmental statement	environmental statement volume 1: 6.1 (excluding chapter 3)	001 (excluding chapter 3)	29.05.2018 (excluding chapter 3)
	environmental statement volume 1: 6.1 (chapter 3)	002	30.01.2019
	environmental statement volume 2: 6.2 appendices 1.1, 1.2, 3.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.1, 6.2, 6.3, 7.1, 7.2, 7.3, 8.1, 8.2, 8.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.1, 10.2, 10.3, 10.4,	001	29.05.2018

	10.5, 11.1, 15.1, 16.1, 16.2, 16.3, 16.4, 17.1, 17.2, 17.3		
	appendix 9.10	003	30.01.2019
	appendices 5.1 and 5.2	003	13.12.2018
	environmental statement volume 3:	001	29.05.2018
	breeding bird survey: 8.4.2	001	18.10.2018
	reptile survey: 8.4.3	001	18.10.2018
	bat activity survey: 8.4.4	001	08.11.2018
	cover letter in relation to removal of stage 0, the site reconfiguration works, from the application	N/A	08.11.2018
	removal of stage 0 mitigation review: 8.5.5	001	08.11.2018
	assessment of non-material amendments to proposed scheme: 8.4.8	001	22.11.2018
	errata – environmental statement (chapters 7, 8 and 11): 8.3.1	001	18.10.2018
	update to the cumulative assessment: 8.4.9	001	22.11.2018
the flood risk assessment	6.8	003	08.11.2018
the land plans	Key plan: 2.2	03	06.11.2019
	Sheet 2: 2.2	04	04.01.2019
	Sheet 3: 9.5	01	28.03.2019
	Sheet 5: 2.2	04	04.01.2019
	Sheet 6: 2.2	03	06.11.2018
	Sheet 7: 2.2	02	07.11.2018
	Sheet 8: 2.2	03	06.11.2018
	Sheet 9: 2.2	02	07.11.2018
the outline construction environmental management plan	6.5	005	21.03.2019
the outline construction traffic management plan	6.2.5.2	003	13.12.2018
the outline construction worker travel plan	6.2.5.1	003	13.12.2018
the outline public right of way management plan	8.4.6	002	20.02.2019
the outline landscape	6.7	005	28.03.2019

and biodiversity strategy			
the works plans	Sheet 2: 2.3A	02	22.10.2018
	Sheet 3: 2.3A	01	16.05.2018
	Sheet 4: 2.3A	01	16.05.2018
	Sheet 5: 2.3A	02	22.10.2018
	Sheet 6: 2.3A	02	22.10.2018
	Sheet 13: 2.3A	01	16.05.2018
	Sheet 16: 2.3A	01	16.05.2018
	Sheet 18: 2.3A	01	16.05.2018
	Sheet 19: 2.3A	02	22.10.2018
	Sheet 20: 2.3A	01	16.05.2018
	Sheet 21: 2.3A	02	22.10.2018
	Sheet 22: 2.3A	01	16.05.2018
	Sheet 23: 2.3A	01	16.05.2018
	Sheet 24: 2.3A	03	22.10.2018
	Sheet 25: 2.3A	02	22.10.2018
	Sheet 26: 2.3A	02	29.06.2018
	Sheet 28: 2.3A	01	16.05.2018
	Sheet 30: 2.3A	02	22.10.2018
	Sheet 31: 2.3A	02	22.10.2018
	Sheet 32: 2.3A	02	22.10.2018
	Sheet 33: 2.3A	01	16.05.2018
	Sheet 34: 2.3A	01	16.05.2018
	Sheet 35: 2.3A	01	09.05.2018
	Sheet 36: 2.3A	01	16.05.2018
	Sheet 37: 2.3A	02	22.10.2018
	Sheet 39: 2.3A	01	16.05.2018
	Sheet 41: 2.3A	01	16.05.2018
	Sheet 42: 2.3A	01	16.05.2018

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Drax Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station and battery storage energy facility. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 40 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Selby District Council Access Selby, Selby District Council, Market Cross Shopping Centre, Selby, YO8 4JS.