The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Tees Combined Cycle Power Plant

Examining Authority's Report
of Findings and Conclusions

and

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

Examining Authority

David Richards BSocSci, Dip TP, MRTPI

10 January 2019

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The Planning Inspectorate

ERRATA SHEET – Tees CCPP - Ref. EN010082

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 10 January 2019

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

Page No.	Paragraph	Error	Correction
1		Teeside Power Station	Teesside Power Station
10	2.1.1	new, large energy generating plan	new, large electricity generating plant
10	2.1.4	5th bullet point	Should be deleted
17	3.3.1	carried over into EU law	carried over into UK law
29	4.2.8	(NE)s	(NE)
35	4.8	Assesment	Assessment
47	4.9.54	the stack height was 7m or 7.5m"	the stack diameter was 7m or 7.5m
50	4.9.67	I am have also	I have also
57	4.12.6	itigation	mitigation
73	4.14.33	paragraph 4.13.33 above	paragraph 4.13.31 above
76	4.16.5	n	on
79	4.17.10	Requirement 21	Requirement 20
109	6.3.1	less than significant harm to interest	to interests
109	6.3.1	as summarise above	as summarised above
109	6.3.1	Mitigate	mitigate

Page No.	Paragraph	Error	Correction
111	7.1.7	Northern Power	Northern Powergrid
111	7.1.8	on	Delete

OVERVIEW

File Ref: EN010082

The application dated 22 November 2017, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 22 November 2017.

The applicant is Sembcorp Utilities (UK) Limited.

The application was accepted for examination on 18 December 2017.

The examination of the application began on 10 April 2018 and was completed on 10 October 2018.

The development proposed comprises the construction, operation and maintenance of a gas-fired electricity generating station with a nominal net electrical output capacity of up to 1,700 megawatts (MW) at ISO[1] conditions, on the site of the former Teeside Power Station, which forms part of the Wilton International Site, Teesside.

Summary of Recommendation:

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

[1] International Organisation for Standardisation

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1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The Application for the Tees Combined Cycle Power Plant (the Proposed Development) EN010082 was submitted by Sembcorp Utilities (UK) Limited (the Applicant) to the Planning Inspectorate on 22 November 2017 under section 31 of the Planning Act 2008 (PA 2008) and accepted for Examination under section 55 of the PA 2008 on 18 December 2017.

1.1.2. The Proposed Development comprises an electricity generating station located on land within the Wilton International site, Teesside, with a nominal net electrical output capacity of up to 1700 MW at ISO Conditions and including:

- Work No. 1A – up to two separate Combined Cycle Gas Turbine (CCGT) units, with each generating unit including a gas turbine, steam turbine and electricity generator, heat recovery steam generators (HRSG); condensors; emission stacks; and main and auxiliary transformers;
- Work No.1B – cooling infrastructure including up to two banks of hybrid cooling towers; pumps; and sampling and dosing plant;
- Work No. 2A - associated development in connection with the project including a permanent laydown area, vehicle parking area, internal roadways and footpaths, lighting and signage;
- Work No. 2B – associated development including an area reserved for carbon capture, compression and storage, to be laid out as vehicle parking and used for open and covered storage and laydown during construction.

1.1.3. Full details of the proposed works and associated development are set out in Schedule 1 'Authorised Development' of the final version of the dDCO [REP8-009]

1.1.4. Construction of the project could proceed under one of two scenarios, as follows:

- Scenario One: two CCGT trains of up to 850 MW are built in a single phase of construction to give a total capacity of up to 1,700 MW.
- Scenario Two: one CCGT train of up to 850 MW is built and commissioned. Within an estimated five years of its commercial operation the construction of a further CCGT train of up to 850 MW commences.

1.1.5. The location of the Proposed Development is shown in the Environmental Statement (ES) [APP-009, APP-010, APP-011] and Land Plans [APP-012]. The site lies in the area of Redcar and Cleveland Borough Council and is wholly in England.

1.1.6. 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 Department of Communities and

Local Government (DCLG) in its decision to accept the Application for Examination in accordance with section 55 of PA2008 [PD-001].

1.1.7. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the proposed development is an NSIP as it comprises an onshore electricity generating station with a capacity of more than 50MW (up to 1700 MW gross output capacity) and associated development, is within sections 14(1)(a) and 15(2) of PA2008, and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of an NSIP set out in s14 (1a) and s15 (2) of PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 5 February 2018, Kevin Gleeson was appointed as the Examining Authority (ExA) for the application under s61 and s78/79 of PA2008 [PD-004]. Due to a short term indisposition, Kevin Gleeson resigned as Examining Authority and was replaced by David Richards on 6 April 2018 (before the commencement of the examination) under s79 of the PA2008 [PD-007].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

The persons involved in the Examination were those persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination began on 10 April 2018 and concluded on 10 October 2018.

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A.

The Preliminary Meeting

1.4.3. On 9 March 2018, I wrote to all Interested Parties (IPs) and Statutory Parties and 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 early issue specific hearing (ISH) on the scope of the application [PD-005], outlining:

- the arrangements and agenda for the PM;
- notification of a hearing to be held in the early stage of the Examination;
- agenda for the early hearings;
- an Initial Assessment of the Principal Issues (IAPI);
- the draft Examination Timetable;
- availability of RRs and application documents; and
- The ExA's procedural decisions.

1.4.4. The Preliminary Meeting (PM) took place on 10 April 2018 at Redcar and Cleveland House, Kirkleatham Street, Redcar, TS10 1RT. An audio recording [EV-002] and a note of the meeting [EV-001] were published on the Planning Inspectorate National Infrastructure website.

1.4.5. The ExA's procedural decisions and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-009], dated 18 April 2018.

Key Procedural Decisions

1.4.6. The procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be obtained from the Rule 8 Letter [PD-009] and so there is no need to reiterate them here.

Site Inspections

1.4.7. Site Inspections are held in PA2008 Examinations to ensure that the ExA has an adequate understanding of the Proposed Development within its site and surroundings and its physical and spatial effects.

1.4.8. Where the matters for inspection can be viewed from the public domain and there are no other considerations such as personal safety or the need for the identification of relevant features or processes, and Unaccompanied Site Inspection (USI) is held. Where an inspection must be made on land requiring consent to access, there are safety or other technical considerations and / or there are requests made to accompany an inspection, and Accompanied Site Inspection (ASI) is held.

1.4.9. The ExA held the following USIs:

- USI 1, 14 March 2018: Familiarisation with site and surroundings – Original ExA [EV-005];
- USI 2, 9 April 2018: Familiarisation with site and surroundings – Replacement ExA [EV-006].

A site note providing a procedural record of each USI can be found in the Examination Library under the above references.

1.4.10. The ExA held the following ASIs:

- ASI 1, 12 June 2018: Detailed site inspection and accompanied visit to viewpoints and other locations of interest. Following completion of the accompanied inspection I made an unaccompanied visit to Eston Nab to view the site in context [EV-007].

1.4.11. The itinerary for the ASI can be found in the Examination Library under the above reference.

1.4.12. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant sections of this Report.

Hearing Processes

1.4.13. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard - in summary terms:
  - where persons affected by compulsory acquisition (CA) and/or temporary possession (TP) proposals (Affected Persons) object and request to be heard at a Compulsory Acquisition Hearing (CAH); and / or
  - where IPs request to be heard at an Open Floor Hearing (OFH).
- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters under examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.14. The ExA held a number of hearings to ensure the thorough examination of the issues raised by the Application.

1.4.15. Issue Specific Hearings (ISHs) under s91 of PA2008 were held at Redcar and Cleveland House, Kirkleatham Street, Redcar; a location within reasonable travelling distance of the application site and where those most likely to be affected by the application live.

- An ISH on the subject matter of the scope of the application was held on Tuesday 10 April 2018 [EV-003 & EV004].
- An ISH on Environmental Matters was held on Wednesday 13 June 2018_[EV-009 & EV-010].
- An ISH on the draft DCO was held on Thursday 14 June 2018 [EV-011]

1.4.16. There was no need for any Compulsory Acquisition Hearings (CAH) as the Applicant owns or otherwise controls all the land needed for the project and did not seek any compulsory acquisition or temporary possession powers (see Chapter 7).

1.4.17. No request for an Open Floor Hearing (OFH) was made during the course of the Examination.

Written Processes

1.4.18. 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. All of this material is recorded in the Examination Library (Appendix B) and published online. Individual document references to the Examination Library in this report are enclosed in square brackets []. For this reason, this Report does not contain extensive summaries of all documents and representations, although full regard has been had to them in the ExA's conclusions. The ExA has considered all important and relevant matters arising from them.

1.4.19. Key written sources are set out further below.

Relevant Representations

1.4.20. 12 relevant representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-012]. All makers of RRs received the Rule 6 Letter and were provided with an opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in Chapter 4 of this Report.

Written Representations and Other Examination Documents

1.4.21. The Applicant and IPs were provided with opportunities to:

- make written representations (WRs) (Deadline (D) 2);
- comment on WRs made by the Applicant and other IPs (D3, D4 and D5);
- summarise their oral submissions at hearings in writing (D1, D2, D4 and D6);
- make other written submissions requested or accepted by the ExA; and
- comment on the Report on the Implications for European Sites (RIES) [PD-015] published on 5 September 2018 (by D8).

1.4.22. All WRs, oral submissions made at hearings and other examination documents have been fully considered by the ExA. The issues that they raise are considered in Chapters 4 and 5 of this Report.

1.4.23. The matters raised in RRs, WRs and responses to my questions, in Statements of Common Ground (SoCGs) and matters arising at hearings have been responded to in the course of this report and are taken into account to the extent that they are important and relevant[2].

Local Impact Report

1.4.24. A Local Impact Report (LIR) is a report made by a relevant local authority giving details of the likely impact of the Proposed Development on the authority's area (or any part of that area) that has been invited and submitted to the ExA under s60 PA2008.

1.4.25. One LIR was received by the ExA from Redcar and Cleveland Borough Council [REP2-065].

1.4.26. The LIR has been taken fully into account by the ExA in all relevant Chapters of this Report.

Statements of Common Ground

1.4.27. A SoCG is a statement agreed between the applicant and one or more IPs, recording matters that are agreed between them.

1.4.28. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

[2] PA2008 s104(2)d

- Historic England [REP2-042];
- Natural England [REP2-009];
- Environment Agency [AS-003];
- Redcar and Cleveland Borough Council [REP4-009];
- Tees Valley Wildlife Trust [REP2-047];
- Civil Aviation Authority [REP2-016];
- National Grid [REP2-038].

1.4.29. The SoCGs have been taken fully into account by the ExA in all relevant Chapters of this Report. SoCGs with Highways England [REP2-055] and English Heritage [REP2-042] were submitted but not signed, and I have not given them weight. However there were no unresolved issues between the parties in respect of highways or heritage at the end of the Examination.

Written Questions

1.4.30. The ExA asked two rounds of written questions.

- First written questions (FWQ) [PD-008] and procedural decisions were sent out with the Rule 8 letter [PD-009], dated 18 April 2018.
- Second written questions (SWQ) [PD-012] were issued on 24 July 2018.

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

- 8 May 2018 [PD-006] which concerned the Applicant's proposed change to the application and requested comment on the implications of the proposed change;
- 8 June 2018 [PD-011] which was a request for comment on a number of documents which though submitted by the Applicant at Deadline 2, were not published on the website due to an administrative oversight; and
- 5 September 2018 [PD-014] seeking further information in connection with the publication of the RIES.

1.4.32. All responses to the ExAs written questions have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

1.4.33. There were no requests to join the Examination by persons who were not already IPs at or after the PM.

1.4.34. 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. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required (EIA development).

1.5.2. On 21 February 2017, the Applicant submitted to the Planning Inspectorate under Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (SI 2263) (the 2009 EIA Regulations) a request for an opinion as to the information to be provided in the Environmental Statement (ES) (a Scoping Opinion). The Applicant also notified the Secretary of State under Regulation 6(1)(b) of the 2009 EIA Regulations that it proposed to provide an ES in respect of the Project.

1.5.3. On 31 March 2017 the Planning Inspectorate (on behalf of the SoS for the Ministry of Housing, Communities and Local Government) adopted a Scoping Opinion [APP-063]. Therefore, in accordance with Regulation 4(2)(a) of the 2009 EIA Regulations, the Proposed Development was determined to be EIA development, and the application was accompanied by an ES [APP-041 to APP-081].

1.5.4. The 2009 EIA Regulations were revoked and replaced by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 in May 2017, after the Applicant's request for a Scoping Opinion. I discuss the implications and transitional arrangements within Chapter 3 of this Report, where I explain why this Application should be considered against the 2009 Regulations.

1.5.5. The potential effects on the environment have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate likely significant effects identified by the Applicant. Information provided by the Applicant throughout the Examination in response to my questions and matters raised by Interested Parties (IPs) are addressed in this report.

1.5.6. On 12 February 2018, the Applicant provided the Planning Inspectorate with certificates confirming that s56 and s59 of PA2008 and Regulation 13 of the 2009 EIA Regulations had been complied with [OD-001, OD-002, OD-003].

1.5.7. I am satisfied that the ES meets the requirements of Schedule 4 of the 2009 EIA regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making.

1.6. HABITATS REGULATIONS ASSESSMENT

1.6.1. Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP), where required, an application must be accompanied with sufficient information to enable the relevant SoS to meet their statutory duties as the competent authority under the Habitats Regulations. The Applicant took the view that the Proposed Development would not give rise to any likely significant effects (LSE) on European sites and provided a No Significant

Effects Report (NSER) [APP-076; superseded by REP1-001] with the DCO application.

1.6.2. Consideration is given to the Applicant's HRA Report, associated information and evidence and the matters arising from it in Chapter 5 of this Report.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. By the end of the Examination, Redcar and Cleveland Borough Council [AS-033] had entered into a formal obligation with the Applicant that is an important and relevant consideration for the SoS.

1.7.2. This obligation has been taken fully into account by the ExA in all relevant Chapters of this Report.

1.8. OTHER CONSENTS

1.8.1. A full list of other Consents, Licences and Agreements required by the Proposed development in addition to Developmet Consent under the PA2008 is set out in Table 2.1 of the Applicant's document 'Other Consents and Licences' [REP-004]. The latest position on the key consents needed is recorded below.

- **Environmental Permit (EP)**

  The Applicant has yet to submit an Application for an Environmental Permit. However the EA has stated that based on the information to date there is no indication to suggest that an EP would not be issued, as evidenced in their signed SoCG with the Applicant [AS-003].

- **Grid connection**

  The Applicant has had ongoing discussions with National Grid Electricity Transmission (NGET) with regard to the connection of the proposed generating units to the National Grid Greystones A and B Substations which are located within the red line DCO boundary. The Applicant has submitted a completed Connection Application for 1,700MWe Directly Connected Power Station, and has secured a bilateral connection agreement (BCA) for a 1,700MWe directly connected power station (Tees CCPP Power Station at Greystones A and B 275kv substations Reference: A/SUUL/18/1909/TEE-1EN(0)).

- **Gas connection**
  The Applicant has had ongoing discussions with National Grid Gas (NGG) with regard to the reconnection of the existing 24 inch Natural Gas Pipeline to the national transmission system at Billingham AGI. Available capacity significantly exceeds the maximum demand for Tees CCPP.

1.8.2. 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.

1.9. STRUCTURE OF THIS REPORT

1.9.1. 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's decision.
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination.
- **Chapter 5** considers effects on European sites and Habitats Regulations Assessment (HRA).
- **Chapter 6** sets out the balance of planning considerations arising from Chapters 4 and 5, in the light of the factual, legal and policy information in Chapters 1 to 3.
- **Chapter 7** sets out reasons why the Application does not involve Compulsory Acquisition (CA) or Temporary Possession (TP) proposals.
- **Chapter 8** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 9** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.9.2. This report is supported by the following Appendices:

- **Appendix A** – the Examination Events.
- **Appendix B** – the Examination Library.
- **Appendix C** – List of Abbreviations.
- **Appendix D** – [the Recommended DCO]

2. THE PROPOSAL AND THE SITE

2.1. THE APPLICATION AS MADE

2.1.1. The project comprises a natural gas fired combined cycle gas turbine (CCGT) generating station with an output capacity of up to 1,700 MW. The station will include up to two gas turbine units, up to two steam turbine units, ancillary plant and equipment located in the main power island in the western part of the Project Site. The northern part of the site will include hybrid water coolers and, in accordance with policy requirements for new, large energy generating plant, an area of land for possible future carbon capture equipment has been set aside in the eastern part of the site. The design also makes provision for combined heat and power (CHP).

2.1.2. The project site also includes land provision for connections to gas transmission infrastructure and connections to the national grid for energy export.

2.1.3. Dependent on market conditions at the time of construction, two development scenarios are envisaged: one in which the full 1,700 MW would be built (i.e. two trains of 850 MW each); and a second scenario where one train of 850 MW is built and up to five years after commencement of commercial operation of the first train, construction of the second train could commence.

2.1.4. The main project components are:

- Work No. 1A – up to two separate Combined Cycle Gas Turbine (CCGT) units, with each generating unit including a gas turbine, steam turbine and electricity generator, heat recovery steam generators (HRSG); condensors; emission stacks; and main and auxiliary transformers;
- Work No.1B – cooling infrastructure including up to two banks of hybrid cooling towers; pumps; and sampling and dosing plant;
- Work No. 2A - associated development in connection with the project including a permanent laydown area, vehicle parking area, internal roadways and footpaths, lighting and signage;
- Work No. 2B – associated development including an area reserved for carbon capture, compression and storage, to be laid out as vehicle parking and used for open and covered storage and laydown during construction.
- Full details of the proposed works and associated development are set out in Schedule 1 ‘Authorised Development’ of the final version of the dDCO [REP8-009]Two gas turbine generators;

2.1.5. It should be noted that subsequent to the publication of the Scoping Report [APP-062], the project description was amended and no longer includes black start generators and associated dedicated stacks.

2.2. THE APPLICATION AS EXAMINED

2.2.1. At an early stage in the Examination, the Applicant submitted proposals for what it described as 'a non-material change' to the application, consisting of:

- An increase in the maximum height of the turbine hall buildings from 25 metres (m) to 32 m; and
- An increase in the maximum height of the heat recovery steam generator (HRSG) buildings from 44 m to 45 m.

2.2.2. The turbine hall and HRSG buildings comprise Work No. 1A (a) and Work No. 1A (b) of the draft DCO (dDCO). The maximum heights specified in the original dDCO (25m and 44m respectively) are set out in Schedule 2, Requirement 4 of the dDCO [APP-005].

2.2.3. The Applicant explained the rationale for the change as follows: 'The Applicant is currently engaged in a tendering process with a number of contractors, with one to be selected once the Proposed Development is consented and prior to construction. Since submission of the Application in November 2017, one of the contractors has identified that it might be necessary to increase the maximum height of the turbine hall and HRSG building. This has necessitated the need to request a change to the maximum heights set out within the draft DCO.'

2.2.4. To accompany the change request the Applicant submitted a document reviewing the implications of the proposed change for the EIA [AS-009]. It covered 5 key topics which were potentially affected: Air Quality, Noise, Landscape and Visual Impact, Heritage and Human Health. The report reviewed each topic and updated the assessment of potential impacts taking account of the proposed building height amendments. The review concluded that there would be no changes to the conclusions presented in the ES and the changes would not alter the overall findings of the EIA as the conclusions on the significance of effects remain unchanged.

2.2.5. Two consultation exercises were carried out in respect of the proposed change. Details of the consultation carried out are set out in Section 2 of the Applicant's consultation report [AS-027].

Consultation led by the Applicant

2.2.6. The consultation period was 01 May 2018 – 7 June 2018 (38 days). The Applicant followed the guidance in Planning Inspectorate Advice Note 16: *How to request a change which may be material*. Details of the proposed change were sent to all s42, 43 and 44 parties consulted at the pre-application stage; a leaflet and notice requesting comment was sent to all s47 parties consulted at the pre-application stage; consultees were given at least 28 days to respond; change documentation was deposited at the same locations used at the pre-application stage; newspaper notices placed for two consecutive weeks in three local newspapers and notices erected at multiple locations near to the site.

2.2.7. Members of the Applicant's project team attended the following events:

- Lazenby Environment Group – 30 April 2018
- Grangetown Neighbourhood Action Partnership (NAP) – 8 May 2018
- Eston NAP – 16 May 2018;and
- Industrial Briefing Group – 5 June 2018

ExA led consultation

2.2.8. I sent a letter to all Interested Parties providing details of the proposed change and a link to the Applicant's submissions on the website on 2 May 2018. Interested Parties were given until 29 May 2018 to respond.

Responses

2.2.9. There were 7 responses to the Applicant led consultation and 6 to the ExA led consultation. One respondent made an identical submission to both exercises. 1 negative response was received, with all the others being neutral (i.e. indicating no objection). The letter of objection was received from a local resident [AS-027]. Whilst objecting to the increased height and visual impact of the buildings, the weight of this objection was to the principle of the development in this location with reference to the problems experienced with the previous power station on the site. The clear majority of responses indicated that the changes would not result in any new or different likely significant effects

2.2.10. Having considered all the responses I made a procedural decision on 4 July 2018, confirming that the proposed change could be accepted for examination as part of the proposed development. The reasoning for this is set out in full in the procedural decision [PD-013]. In summary I concluded that the requested changes are not of such significance as to amount to a form of development which is substantially different to that which was originally applied for. Given that the proposed changes have been advertised and placed on deposit, accepting them for examination as part of the proposed development would not result in prejudice to any interested party.

2.3. RELEVANT PLANNING HISTORY

2.3.1. The Project will be located on land at Wilton International, a major industrial complex located near Redcar in Teesside, northeast England. Approximately 1,500 people are employed directly by companies operating on the Wilton International site, and approximately another 1,000 work on the site as permanent contractors or in the 40 or more supply chain companies located on the site. The site is home to a wide range of industrial and related processes, including oil refining, petro-chemical processing and power production. It is serviced by a complex network of surface and sub-surface utility and product interconnection infrastructures including water, steam, gas and product transport systems.

2.3.2. The Wilton International Site is approximately 810 hectares (2,000 acres) in size and benefits from three (identical) instruments of consent granted by Redcar, Eston and Guisborough Borough Councils in 1946 (referred to

collectively as the 'IOC'). The IOC effectively confers deemed planning consent for heavy and light industrial development. It is noteworthy that the site is not at full capacity and some plots are currently vacant and would be categorised as brownfield.

2.3.3. The Project Site itself is classified as 'brownfield' and covers an area of approximately 15 hectares. The site has a history of similar industrial use to that proposed in this application; specifically a CCGT plant was constructed at the site in 1990 by Enron Power Company (later acquired by GDF Suez) and came into operation in 1993. Prior to 1990 the site was mainly undeveloped /agricultural land. The previous power station ceased operations in 2013, and the decommissioning and demolition of all buildings and plant was undertaken between 2013 and 2015. The ground bearing slabs and foundations are still present on site as are connections to natural gas, water and electrical distribution infrastructure.

2.3.4. The Teesside Ensus bioethanol plant is adjacent to the east of the Project site and is Europe's largest wheat bio refinery. Open grazing land and Lazenby village lies to the south of the site and to its north is brownfield industrial land. To its west lies the A1053 road and mature perimeter planting, which acts as screening between the Wilton International site and the residential areas of Grangetown and Eston. This large area of mature planting is part of the Green Wedge (Green Infrastructure Policy CS23b), which is made up of open or green spaces that link together to create an informal but planned network across a wide geographical area.

2.3.5. The Project Site is accessed from the A1053 Greystone Road, which forms part of the strategic trunk road network. The A1053 connects to the A174 to the south and A66 Tees Dock Road to the north. The A174 provides a link to the A19 to the south which in turn links to the A1 (M).

2.3.6. Made ground (or fill) is known to be present across the application site to depths of up to 2.2 m. Below this layer British Geological Survey mapping indicates that the site is underlain by superficial deposits of glacial till and clays and silts to thicknesses of up to 11 m overlying a mudstone bedrock.

2.3.7. A number of surface watercourses and drains are located in the vicinity of the Project site but no natural water bodies are within the site itself. Kettle Beck is located immediately adjacent to the western site boundary and flows in a northerly direction towards the River Tees. There are also four other small drainage ditches within close proximity of the Project site.

2.3.8. As the Project site is located in an industrial area there are local sources of emissions to atmosphere surrounding the Project; these are predominantly made up of industrial sources and road traffic. There are sensitive residential receptors to the south, east and west of the Project site although no Air Quality Management Areas (AQMAs) for nitrogen dioxide (the only gaseous pollutant of concern for the Project) are

declared within the 15 km study area used for the ES air quality assessment.

3. LEGAL AND POLICY CONTEXT

3.1. THE PLANNING ACT 2008

3.1.1. This chapter sets out the relevant legal and policy context for the application which was taken into account and applied by the Examining Authority (ExA) in carrying out its examination and in making its findings and recommendations to the Secretary of State (SoS).

3.1.2. Chapter 2 of the Environmental Statement (ES) [APP-044] and the Applicant's Planning Statement [APP-036] set out the policy position in relation to the Proposed Development. The document includes an assessment of the project against the policy requirements of National Policy Statements (NPSs) EN-1 and EN-2. Individual chapters of the ES provide specific background relating to particular topics particularly, and if relevant, on international obligations.

3.1.3. The Local Impact Report (LIR) [REP2-065] of Redcar and Cleveland Borough Council (RCBC) sets out the local authority's position on applicable development plan policies and other local strategies. Since the commencement of the Examination, the Redcar and Cleveland Borough Local Plan was adopted as the statutory local plan for the area on 24 May 2018.

3.2. NATIONAL POLICY STATEMENTS

3.2.1. NPSs set out Government policy on different types of national infrastructure development. I consider that the NPSs relevant to this case are:

- EN-1: Overarching NPS for Energy;
- EN-2: Fossil Fuel and Electricity Generating Infrastructure

3.2.2. The NPSs were designated by the SoS for Energy and Climate Change on 19 July 2011. Responsibility for energy now rests with the Department for Business, Energy and Industrial Strategy (BEIS).

3.2.3. The NPSs form the primary policy context for this Examination. This report sets out my findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s104 of PA2008. The purpose and broad content of these NPSs is summarised here. However, particular and subject specific consideration of policy arising from them is provided where necessary in the remainder of this report below, particularly in Chapter 4.

EN-1: Overarching National Policy Statement for Energy

3.2.4. NPS EN-1 sets out the Government's policy for delivery of major energy infrastructure projects. Paragraph 3.1.1 of EN-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 EN1 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".*

3.2.5. EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. Generic impacts of particular relevance to this application include impacts on air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport, environmental, social and economic benefits and adverse impacts at national, regional and local levels.

3.2.6. The NPS requires account to be taken of the potential benefits of the proposed development to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and the potential adverse impacts, including any long-term and cumulative adverse impacts, as well as measures to avoid, reduce or compensate for any adverse impacts.

3.2.7. 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.

EN-2: Fossil Fuel and Electricity Generating Infrastructure

3.2.8. NPS EN-2 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, Combined Heat and Power (CHP), Carbon Capture Readiness (CCR), climate change adaptation and consideration of good design. In terms of the impacts of gas generating stations, EN-2 re-iterates the policy in EN-1 and adds the need to consider impacts of air emissions, landscape and visual, noise and vibration and water quality and resources.

Other NPSs

3.2.9. NPS EN-4: Gas supply infrastructure and gas and oil pipelines 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 take advantage of an existing gas connection which served the previous power station on the site.

3.2.10. The Applicant owns the pipeline and the connection point to the Proposed Development. National Grid Gas is responsible for the reconnection to the Applicant's pipeline at the Enron Billingham Exit Point. Following discussions between the Applicant and NGG, it was agreed that NGG would undertake a bespoke technical study to assess reconnection and contracts were signed on 28 March 2018. Upon completion of this study,

the Applicant will be in a position to apply for a Full Connection Offer for NGG to supply the capacity required for this project.

3.2.11. I am therefore satisfied that there are no ancillary land implications relevant to the achievement of a suitable gas supply and accordingly that NPS EN-4 is not relevant to this application.

3.2.12. NPS EN-5: Electricity Networks Infrastructure 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 132 Kilovolts (KV) or above. The proposed development would require to be connected to the grid to export electricity, and would make use of existing substations within the site which are connected to the grid and served the previous power station. The Applicant is in discussion with National Grid Electricity Transmission [REP2-038], to secure consent through a private agreement. As there is no ancillary land requirement for the electricity connection I am satisfied that NPS EN-5 is not relevant to this application.

3.3. EUROPEAN LAW AND RELATED UK REGULATIONS

3.3.1. The EU withdrawal Act states that all existing obligations are carried over into EU law unless specifically excluded or amended. The SoS will need to satisfy himself/herself as to the position at the time the decision is made.

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

3.3.2. The EIA Directive defines the procedure by which information about the environmental effects of a project is collected and taken into account 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.

3.3.3. The proposed development falls to be considered under the UK legislation related to 2011/92/EU: the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) as discussed further below.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

3.3.4. The current EIA legislation for NSIP cases is the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations). They revoke the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the 2009 EIA Regulations) subject to transitional provisions in Regulation 37 of the 2017 EIA Regulations.

3.3.5. The 2017 EIA Regulations came into force on 16 May 2017, before the application was made. Nevertheless, Regulation 37(2)(a)(ii) of the 2017

EIA Regulations states that the 2009 EIA Regulations will continue to apply to any application for an order granting development consent or subsequent consent where before the commencement of the 2017 Regulations, the Applicant had requested the SoS to adopt a scoping opinion defined by the 2009 EIA Regulations.

3.3.6. The Applicant considered that the transitional provisions apply to this application and hence complied with the relevant provisions of the 2009 EIA Regulations in the pre-application period [APP-043]. However, the Applicant chose to also address the additional elements introduced by the 2017 EIA Regulations on a voluntary basis [APP-043].

3.3.7. The Applicant requested a Scoping Opinion from the SoS on 21 February 2017 and that Opinion was adopted by the Planning Inspectorate (on behalf of the SoS) on 31 March 2017. I am therefore satisfied that for this application, the provisions in Regulation 37(2)(a)(ii) of the 2017 EIA Regulations apply and accordingly, the application should be considered against the 2009 EIA Regulations.

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

3.3.8. The 2009 EIA Regulations establish the minimum information to be supplied by the Applicant within an ES, as well as information that an ExA can request as being reasonably justified given the circumstances of the case. Part 2 of Schedule 4 represents the minimum requirements for an ES under the EIA Regulations and this is reinforced by Regulation 3(2), which sets out the core duty of the decision-maker in making a decision on EIA Development. Regulation 3(2) of the 2009 EIA Regulations states:

3.3.9. "…the decision-maker must not make an order granting development consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so." The proposed development is EIA development under Schedule 2 of the 2009 EIA Regulations. The Applicant has provided an ES [APP-041 to APP-081] as part of the submitted application.

3.3.10. In reaching my conclusions and recommendation I have taken the environmental information as defined in Regulation 3(2) (including the ES and all other information on the environmental effects of the development) into consideration.

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

3.3.11. 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 (PM10 and PM2.5), 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).

3.3.12. 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 Air Quality Management Area 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)

3.3.13. The Environmental Permitting (England and Wales) Regulations 2016 (as amended) (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, and environmental permit (EP) would be required before the Proposed Development commences operation.

3.3.14. Under the IED and Environment Permitting 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 as a whole. Generating stations exceeding 50 MW thermal input such as the Proposed Development are covered by the IED and EPR.

Industrial Emissions Directive (IED)

3.3.15. The IED provides operational limits and controls with 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 50 MW 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. The current version of the LCP BRef has been in publication since July 2006.

3.3.16. I consider the application against the EU directive and subsequent legislation on air quality matters in the relevant sections in Chapter 4 of this Report.

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

3.3.17. 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 Special Areas of Conservation (SACs).

3.3.18. 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.

3.3.19. The relevance of this Directive to this application is set out directly in Chapter 5 (HRA) of this report, but it is considered elsewhere as required.

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

3.3.20. The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union (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 Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

3.3.21. The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.

3.3.22. The relevance of this Directive to this application is set out directly in Chapter 5 (HRA) of this report, but it is considered elsewhere as required.

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

3.3.23. The Habitats Regulations provide domestic force to the Habitats Directive and the Wild Birds Directive and provide the cornerstone on which the practice of Habitats Regulations Assessment (HRA) is undertaken in England and Wales. Their relevance to this application is set out directly in Chapter 5 (HRA) of this report, but they are considered elsewhere as required.

3.3.24. The types of European site relevant to this process are as follows:

- Special Areas of Conservation (SACs) designated pursuant to the Habitats Directive;
- Special Protection Areas (SPAs) designated pursuant to the Birds Directive; and
- Ramsar Sites designated under the Ramsar Convention on Wetlands of International Importance.

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

3.3.25. The Water Framework Directive (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.

3.3.26. 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.

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

3.3.28. The Environment Agency (EA) has confirmed that the Proposed Development would have no significant adverse impact on WFD water bodies [REP5-006; REP5-008; AS-003]. As such, I consider that the WFD is complied with. I report on the discussions around WFD matters during the Examination in more detail in section 4.16 of this Report.

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

3.3.29. 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 300 MW or more (and for which the construction / operating license was granted after the date of the Directive) are required to carry out a study, known as the CCR feasibility study, to assess:

- Whether suitable storage sites for carbon dioxide (CO2) are available;
- Whether transport facilities to transport CO2 are technically and economically feasible; and
- Whether it is technically and economically feasible to retrofit for the capture of CO2 emitted from the power station.

3.3.30. 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 large combustion plant to be CCR.

The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013

3.3.31. 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.

3.3.32. 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 300 MW 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.

3.3.33. The CCR implications of the proposed development are considered below in Chapter 4.

3.4. OTHER LEGAL PROVISIONS

United Nations Environment Programme Convention on Biological Diversity 1992

3.4.1. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have 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, I find that compliance with UK provisions on environmental impact assessment and transboundary matters with regard to impacts on biodiversity referred to in this Chapter, satisfies the requirements of the Convention.

3.4.2. 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.

The Wildlife and Countryside Act 1981 (as amended)

3.4.3. 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 Sites of Special Scientific Interest (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 Natural England (NE).

3.4.4. The Act provides for and protects wildlife; nature conservation, countryside protection and National Parks; and Public Rights of Way (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)

3.4.5. 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 National Nature Reserves (NNRs) and for local authorities to establish Local Nature Reserves (LNRs).

3.4.6. 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

3.4.7. The Countryside and Rights of Way Act brought in new 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.

3.4.8. 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

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

The Planning (Listed Buildings and Conservation Areas) Act 1990

3.4.10. 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.

3.4.11. 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 Secretary of State 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.

3.4.12. 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.

3.4.13. There are a number of heritage assets in proximity to the application site, impacts to which are consideredin Chapter 4 below.

Ancient Monuments and Archaeological Areas Act 1979

3.4.14. 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 Town and Country Planning Act 1990 (TCPA1990) and the National Planning Policy Framework (the Framework).

Environmental Protection Act 1990

3.4.15. 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 4 of this Report.

Control of Pollution Act 1974

3.4.16. 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 Best Practicable Means be adopted for construction noise on any given site.

Noise Policy Statement for England

3.4.17. 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*".

3.4.18. 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.

3.4.19. 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

3.4.20. 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. I consider the application against such matters in the relevant sections in Chapter 4 of this Report.

3.5. MADE DEVELOPMENT CONSENT ORDERS

3.5.1. In responses made by the Applicant to WQs [REP2-080] and SWQs [REP5-005] and to the ISH on the draft DCO [REP4-002], the Applicant has made reference to the following DCOs to support their position:

- Knottingley Power Plant Order (FWQ1.3.32)
- York Potash DCO (FWQ1.3.14)
- East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (FWQ1.3.14)
- Wrexham Gas Fired Generating Station Order (FWQ1.3.7& 1.3.13)
- Meaford Gas Fired Generating Station Order 2016 (FWQ1.3.13)
- South Hook Combined Heat and Power Plant Order 2014 (FWQ1.3.12)
- Able Marine Energy Park DCO 2014 (FWQ1.3.12)
- Progress Power Order 2015 (FWQ1.3.13)
- East Anglia Three Offshore Windfarm Order (FWQ1.3.4)

3.5.2. Where needed, I comment on these further in the following Chapters of this report.

3.6. TRANSBOUNDARY EFFECTS

3.6.1. Under Regulation 24 of the 2009 EIA Regulations and on the basis of the information available from the Applicant, the SoS is not of the view that the proposed development would be likely to have significant effects 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 Planning Inspectorate Advice Note 12: Transboundary Impacts and Process). Transboundary issues consultation under Regulation 24of the 2009 EIA Regulations was therefore not considered necessary. I agree with this conclusion.

3.7. OTHER RELEVANT POLICY STATEMENTS

3.7.1. I have 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).

3.8. THE NATIONAL PLANNING POLICY FRAMEWORK

3.8.1. The Revised Framework was published in July 2018 during the course of the Examination and is an important and relevant consideration, though paragraph 5 makes clear that it is not a source of individual or project-specific policy for NSIP decision making. Paragraph 213 of the Framework states that existing development plan policies should not be considered out-date simply because they were adopted prior to the publication of [the revised] Framework. Due weight should be given to them according to their degree of consistency with this Framework; the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. Paragraph 7 identifies the Framework as the Government's approach to sustainable development; paragraph 8 identifies economic, social and environmental roles which make up the dimensions of sustainable development.

3.8.2. In the recent Eggborough CCGT DCO decision (20 September 2018) the Secretary of State has stated that he is content that there are no significant dissimilarities in the approach taken to sustainable development or to nationally significant infrastructure in the Revised Framework.

3.9. LOCAL IMPACT REPORT

3.9.1. Section 104 of the PA2008 state that in deciding the application the Secretary of State must have regard to any LIR within the meaning of s60(3).

3.9.2. There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs this notice was given in the Rule 8 letter [PD-009].

3.9.3. An LIR was submitted by RCBC at Deadline 2 [REP2-065]. The LIR was structured to respond to key issues identified in the Initial Assessment of Principal Issues (IAPI) set out in Annex B of the Rule 6 letter [PD-005], and assessed the proposal in the relation to the Council's policies. It set out the results of internal consultations undertaken by the Council in response to the application. The overall conclusion was that the Council raised no objection to the proposal subject to the requirements set out in the dDCO.

3.10. THE DEVELOPMENT PLAN

3.10.1. The Development Plan for the area is the Redcar and Cleveland Local Plan, adopted on 24 May 2018 during the course of the Examination.

3.10.2. The LIR identifies Policies SD3 and ED6 as the most relevant to consideration of the proposal. Policy SD3 is a locational policy which supports development within development limits defined in the plan. The Wilton International Site is within such development limits. Policy ED6 promotes economic growth on land within existing industrial estates. The Wilton International Site (ED6.1) is identified as being suitable for specialist industries and sui generis uses, including heavy industry and logistics, and industries such as steel, waste, chemical, refining, utilities, energy, manufacturing, engineering, process industries and other uses which have specific locational requirements or large land take. Although electricity generation is not specifically mentioned, there is a history of generation on the Wilton International site in support of other process industries (including the application site itself), and the proposal falls within the category of uses with specific locational requirements and large land take. Accordingly I find there would be no conflict with these key policies of the Development Plan. This accords with the signed statement of Common Ground between the Applicant and RCBC [REP4-009].

4. THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. This chapter sets out the principal issues and other matters the ExA has identified as arising from the Examination. Under each issue, it summarises the effect of the Proposed Development on that particular issue and any mitigation measures proposed. It comments on matters raised in Relevant Representations (RR), Written Representations (WR), Statements of Common Ground (SoCG) and Local Impact Reports (LIR), as appropriate. It report's the Applicant's response to those comments and draws conclusions.

4.1.2. An initial assessment of the principal issues (IAPI) is set out in Annex B of the Rule 6 letter dated 9 March 2018 [PD-005]. These were arranged under the headings of:

- The Development Consent Order;
- Environmental Impact Assessment;
- Air Quality and Emissions;
- Biodiversity, Ecology and Natural Environment;
- Habitats Regulations Assessment;
- Economic and Social Effects;
- Historic Environment;
- Infrastructure;
- Landscape and Visual;
- Noise and Vibration;
- Transportation and Traffic; and
- Water Environment.

4.1.3. These main issues were discussed at the Preliminary Meeting, and no other issues or areas of concern were raised by any of the parties. Having regard to the extent and nature of representations received, the Examination subsequently focused on the environmental effects of the Proposed Development, principally the effects on Air Quality, Biodiversity, Historic Environment, Landscape and Visual effects, and Noise and Vibration.

4.1.4. Issues arising from the dDCO are dealt with in Chapter 8 below, and HRA considerations in Chapter 5. Detailed consideration is given to the EIA in the relevant sections of the report dealing with generic impacts (Chapter 4). The heading on 'Infrastructure' is covered in sections on CHP Readiness and Carbon Capture Readiness in Chapter 4.

4.2. ISSUES ARISING IN WRITTEN SUBMISSIONS

4.2.1. Twelve RRs were made [RR-001 to RR-012]. A number of RRs were strongly supportive of the application, including those of the Tees Valley Combined Authority [RR-001], South Tees Development Corporation [RR-003], Redcar and Cleveland Borough Council [RR-008], North East Process Industry Cluster (NEPIC) Limited [RR-009] and Tees Valley Mayor Ben Houchen [RR-012].

4.2.2. Mr Ian Shallow, a local resident, commented that he was 'very pro' job developments and would be keen to discuss any adverse effects such as noise, night time pollution and traffic issues [RR-002].

4.2.3. Historic England stated [RR-004] that they had no objection to the proposal and did not wish to make any further representations.

4.2.4. The RR from National Grid Electricity Transmission Plc (NGET) identified NGET infrastructure assets within and in close proximity to the proposed order limits and a consequent need for protective provisions to be included in the DCO, but had no objection in principle [RR-005] (NGET subsequently agreed that no protective provisions were necessary. This is discussed fully in Chapter 8 below).

4.2.5. The Environment Agency [RR-006] reserved the right to comment further on information provided by the Applicant, including the stack height and sensitivity study, Combined Heat and Power readiness assessment, the impact of reduced emission limit values proposed in the EU combustion BREF (Best Available Techniques Reference Document) , and process contribution source data used to model emissions to air.

4.2.6. In written representations submitted at Deadline 2, the EA stated [REP2-032] that the Applicant's Carbon Capture Readiness Statement did not include sufficient information to demonstrate whether there is sufficient space to accommodate the carbon capture plant on the site. The EA considered that the DECC Carbon Capture Readiness guidance (2009) indicates that some 6.5 ha would be required, and not the 5.4 ha proposed by the Applicant.

4.2.7. The EA also stated that the Applicant has not considered the technical feasibility of reducing the stack diameter to aid environmental monitoring of emissions, and to increase the exit velocity from the stack to improve dispersion. With regard to Combined Heat and Power (CHP) the EA considered that the Applicant should demonstrate an active, central involvement in the South Tees District heating scheme. Further information was sought from the Applicant to demonstrate compliance with the Water Framework Directive.

4.2.8. Natural England's (NE)s recorded 'no objection' to the Proposed Development [RR-007]. Nevertheless NE considered that the main issues raised by this application are changes in air quality which could impact on habitats and species associated with designated sites. Based on the information provided by the Applicant, NE advised that the project is unlikely to have significant effects on European and nationally designated sites. NE also noted that the application site currently supports habitats of negligible ecological interest and that all protected species issues had already been addressed [RR-007].

4.2.9. The Health and Safety Executive [RR-011] commented that it would not have a formal role in approving risk or hazard assessments in this case, and requested a consequent amendment to the draft DCO.

4.2.10. BNP Paribas Real Estate on behalf of Royal Mail Group Limited were concerned to ensure that measures were included to minimise disruption to postal deliveries during the construction phase [RR-010].

4.2.11. There were no in-principle objections to the proposal from local residents or businesses.

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORT

4.3.1. Redcar and Cleveland Borough Council supports the Application, as evidenced in its LIR submitted at Deadline 2 [REP2-065]. The LIR provided information on the following matters:

- Policy context;
- Sustainability;
- Landscape and visual impact;
- Biodiversity and ecology;
- Highway issues;
- Residential amenity;
- Environmental protection;
- Drainage and flood risk;
- Heritage;
- Socio-economic issues; and
- Conditions.

4.3.2. Internal consultations (as reported in the LIR [REP2-065]) confirmed that the Council's Development Engineer has no concerns regarding the development. The Council's Conservation Officer concluded that 'the redevelopment of this brownfield site is not considered to harm the setting of heritage assets and thus complies with Policy DP9 of the Local Development Framework and Policy HE2 of the draft Local Plan'.

4.3.3. The Environmental Protection (Nuisance) consultee requested that consideration is given at the detailed design/commissioning stage of the project that any plant or equipment does not create any tonal elements, and in the event should any audible tonal noise be observed during testing and/or commissioning it will be analysed to identify the cause and corrective measures applied. It also requested that the Applicant should verify the acoustic efficiency of the existing noise wall and ensure that the proposed additional acoustic wall along the western boundary should be of similar acoustic efficiency as the existing wall.

4.3.4. The Environmental Protection (Contamination) consultee requested the arrangements to secure remediation in the event of any contamination being discovered during construction. With regard to social and economic impacts, the Council stated that it would welcome a partnership approach with between the Applicant and the Council's Routes to Employment Team when looking to recruit staff for the various phases via the promotion of job opportunities to local residents.

4.3.5. The overall conclusion of the LIR was that the proposed development is considered to make a significant contribution to the provision of energy to serve local demands. The proposed power station and associated

buildings are to be sited within an industrial landscape and therefore while they are sizable, they are not considered to have an adverse impact on the existing landscape character/appearance. Suitable controls are considered to be in place through the requirements attached to the draft DCO and these will ensure that any final details to be agreed are appropriate and delivered accordingly. The Local Authority have worked closely with the Applicant through the pre-application stage of the process and are satisfied that the advice and discussions that have taken place have been considered and delivered through the submitted DCO.

4.3.6. The Applicant and RCBC signed a SoCG which was submitted at Deadline 4 [REP4-009], agreeing that all matters relating to the Proposed Development had been satisfactory addressed. No matters of disagreement exist between the Applicant and the Council.

4.4. CONFORMITY WITH NATIONAL POLICY STATEMENTS

4.4.1. Section 104(3) of PA2008 requires the SoS to decide the application in accordance with any relevant national policy statements that have effect in relation to the application, subject to certain defined exceptions set out in subsections 104(4) to (8), none of which are applicable to this case.

4.4.2. Section 3.1 on NPS EN – 1 requires that this application should be assessed on the basis that the Government has demonstrated that there is a need for the types of infrastructure covered by the energy NPSs. Substantial weight should be given to the contribution which projects would make toward satisfying this need.

4.4.3. Paragraph 3.6.1of NPS EN-1 states that fossil fuel power stations play a vital role in providing reliable electricity supplies; they can be operated flexibly in response to changes in supply and demand and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy, and government policy is that they must be constructed, and operate, in line with increasingly demanding climate change goals.

4.4.4. Section 5 of NPS EN-1 sets out potential generic impacts of energy infrastructure which must be taken into account in assessing projects. Further detail specifically applicable to fossil fuel electricity infrastructure is given in NPS EN-2. These impacts are assessed in the following sections of this report.

4.5. THE PRINCIPLE OF THE DEVELOPMENT

4.5.1. The principle of the development is fully in accordance with the policy in NPS EN-1 and NPS EN-2. None of the IPs suggested that this was not the case and no representation questioning the principle or the need for the development were received.

4.6. ENVIRONMENTAL IMPACT ASSESSMENT METHODOLOGY

4.6.1. The overarching EIA methodology is described in ES Chapter 3 [APP-045]. 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 considered appropriate, the ES describes measures that are intended to mitigate any adverse impacts.

4.6.2. The environmental impacts of the Proposed Development are assessed during its construction and operation and where possible and relevant, the eventual decommissioning. Existing baseline conditions have been defined based on desk-based studies and site surveys.

4.6.3. ES Chapter 3 (Section 3.6.5) [APP-045] outlines the methodology which the Applicant has adopted for its cumulative effects assessment (CEA); including how other developments have been identified for consideration in the CEA in the ES and the in-combination assessment in the HRA. (Broadly the cumulative/in-combination assessments consider other developments which are in development or may be developed in the future and their potential to interact with developments which are already in existence or operational considered as part of the baseline). It is explained that the adopted methodology broadly follows the guidance in the Planning Inspectorate's Advice Note 17: Cumulative Effects Assessment. Cumulative effects are considered in each of the technical chapters (6-15) and ES Chapter 16 provides a summary of cumulative and indirect effects.

4.6.4. ES Table 3.6 [APP-045] identifies the other developments which the Applicant considers have potential to result in cumulative/in-combination effects together with the proposed development. Cumulative effects are then considered in each of the ES topic chapters (6-15) and in-combination effects in the NSER [REP1-001], with other developments considered relevant to each aspect of the assessment identified in the ES. ES Chapter 16 provides a summary of cumulative and indirect effects. In their responses to my FWQ 1.5.4, RCBC, the EA and NE confirmed agreement [REP2-054, REP2-079 and REP2-071, respectively] that all relevant developments had been considered in the CEA. Similarly in their responses to Q1.2.12, NE, the EA and RCBC confirmed agreement [REP2-072; REP2-079 and REP2-081 respectively] that all relevant plans/projects which may result in in-combination effects have been identified and considered by the Applicant in the NSER.

4.6.5. Subsequent to adoption of the Scoping Opinion [APP-063], the Applicant introduced the possibility of phasing the Proposed Development (as described in paragraph 2.1.3 of my report). The Applicant explained in Table 3.2 of the ES [APP-045] how this phasing had been considered in

the EIA. At the ISH on the Scope of the Application[3], I asked the Applicant to further explain how constructing the Proposed Development in two phases (Scenario 2) has been assessed in the ES and addressed within the dDCO. The Applicant responded that construction of the Proposed Development in one rather than two phases is described in ES Chapter 3 'EIA Approach', paragraphs 3.17 and Table 3.2 [APP-045]. Each topic assessed in the ES covered an envelope that included both development scenarios and establishing a worst case as appropriate to a particular topic. The identified worst case was then assessed as appropriate in the topic ES chapters 6 – 13 [APP-048 to APP-057].

4.6.6. The Applicant was asked to confirm whether or not the implementation of Scenario 2 (and in particular the construction of a later power train) would result in effects greater than those anticipated for Scenario 1. Of particular interest was the potential for construction impacts associated with the second power train to interact with the operational impacts of the first power train and how this had been assessed in the ES. The Applicant responded that Table 3.2 in ES Chapter 3 'EIA Approach' has been expanded and amended to provide an explanation for each topic. The revised Table 3.2 [REP2-004] explains why the Applicant considers Scenario 1 to be the worst case scenario for all topics and includes additional consideration of how the impacts would vary under Scenario 2.

4.6.7. The ISH also explored how the Applicant's approach to flexibility in adopting the principle of the Rochdale Envelope was addressed in the ES and the DCO. The Applicant considers that the EIA takes account of all reasonable variations and presents the likely significant effects of these where appropriate. Assessments have been based on an evaluation of the realistic 'worst case scenario' of each technical chapter, particularly those addressing the key issues of noise, air quality, visual impact and the setting of heritage assets. Questions relating to the possible impact of different locations, height and diameter of the main stacks are dealt with in detail below in discussion of Requirement 4.

4.6.8. The ES was updated during the course of the Examination, including to address possible new or different effects arising from the Applicant's requested change. This was advertised in accordance with the EIA Regulations as detailed in section 2.2 above. Environmental information was also provided in response to Written Questions and matters raised in the ISHs. The Applicant included in the dDCO [REP8-009] a definition of the ES, to include the amendments made to the ES during the course of the Examination. I consider these amendments are relatively minor and constitute 'other environmental information' as defined in the 2009 EIA Regulations.

4.6.9. Taking all such material into account, I find that the ES provided a satisfactory framework of evidence and analysis within which to appreciate the likely significant effects of the Proposed Development. In my judgment it has identified the range of such effects and has proposed relevant satisfactory mitigation where appropriate.

[3] Held on Tuesday 10 April 2018

4.6.10. The Proposed Development is not described in the ES in fixed and final detail. As is normal in applications of this scale and nature, options for the detailed delivery of particular aspects are reviewed and the subsequent testing in the ES is then based on a worst case scenario for each topic area. In this respect, I am broadly satisfied that the ES has described a worst case project (as per NPS EN-1 paragraph 4.2.8) – the 'Rochdale Envelope' for the Proposed development[4] –in sufficiently certain terms.

4.6.11. There is one caveat to this broad conclusion which concerns the level of detail provided in respect of the stack height with regard to the potential for a lower stack height to be considered at the detailed design stage. This is discussed fully in the sections below concerned with Air Quality (Chapter 4) and HRA (Chapter 5).

4.7. THE NEED FOR THE PROPOSED DEVELOPMENT AND EXAMINATION OF ALTERNATIVES

4.7.1. The need for the development is covered in NPS EN-1, paragraph 3.1, which states that such applications should be assessed on the basis that the Government has demonstrated that there is a need for this type of infrastructure and that substantial weight should be given to its contribution to satisfying this need. Paragraphs 3.6.1 and 3.6.2 of the same NPS state that there is also a need for a mix of energy sources including fossil fules to meet demand in a flexible manner, which will help in the transition to a low-carbon economy.

4.7.2. Chapter 5 of the ES [APP-047] sets out the Applicant's case for the need for the Proposed Development in section 5.2, with reference to NPS EN-1. No RR or WR was received which questioned the issue of need.

4.7.3. NPS EN-1 section 4.4 draws attention to the need for information about the main alternatives to the Proposed Development to be included in the Applicant's ES. In accordance with Schedule 4, Part 2 of the 2009 EIA Regulations, Chapter 5 of the ES [APP-047] presents an outline of alternatives studied by the Applicant and the main reasons for the choice made. Alternatives considered by the Applicant included upgrade/ modernisation of the CCGT power station previously located on the application site, alternative cooling technologies and alternative sites for the Proposed Development (within the Wilton International site).

4.7.4. I am generally satisfied that sufficient study of alternatives has been set out. No IP suggested that there might be preferable alternative locations or technologies for the development. I agree that the application site is a logical choice for the Proposed Development, having regard to the

[4] Case law derived from the decision in Rochdale MBC Ex. Parte C Tew (1999) provides a legal principle that whilst indicative sketches and layouts cannot provide the basis for determining applications for EIA development, the "Rochdale Envelope" is a series of maximum extents of a project for which the significant effects are established. The detailed design of the project can then vary within this 'envelope' without rendering the ES inadequate.

previous power station use, the industrial character of the Wilton International site, its relationship to the strategic road network, the ready availability of gas and electrical infrastructure and the presence of existing noise and visual screening which will be retained.

4.7.5. Taking these matters into consideration, I am satisfied that the need for the Proposed Development is established through the NPS. Alternative options for the siting of the proposed development have been appropriately tested by the Applicant. The requirements of NPS EN-1 and the EIA regulations in this regard have been met.

4.8. HABITATS REGULATIONS ASSESMENT

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 Habitats Regulations Assessment (HRA). As is usual in reports for decision prepared under PA2008, a separate record of considerations relevant to HRA has been set out in Chapter 5 of this report below. However, at this point it is necessary to record that I have considered all documentation relevant to HRA as required by Section 4.3 of NPS EN-1, and I have taken it into account in the conclusions reached here and in the Planning Balance (Chapter 6 below). Further, project design and mitigation proposals include in the ES and secured in the DCO have been fully considered for HRA purposes.

4.9. AIR QUALITY AND EMISSIONS

4.9.1. There is some overlap between this section and the effects from emissions on European sites in terms of Habitats Regulations. I will outline the issues here, but in the interests of brevity I will reserve examination and discussion on HRA matters to Chapter 5 of this Report. Effects on biodiversity in relation to nationally and locally designated sites are addressed in section 4.10 of this Chapter.

Policy

4.9.2. Paragraph 4.10.2 of NPS EN-1 sets out the separate functions between planning and pollution control systems in respect of 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, the use of measures to prohibit or limit the releases of substances to the environment and ensures that ambient air and water quality meet appropriate standards.

4.9.3. Paragraph 4.10.3 of NPS EN-1 states that the SoS should focus on whether the development itself is an acceptable use of land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The SoS is entitled to assume that relevant pollution control and environmental regulatory regimes will be properly applied and enforced and that the DCO process under PA2008 should seek to compliment but not duplicate them.

4.9.4. Paragraph 5.2.6 of NPS EN-1 requires the Applicant to assess the impacts of the Proposed Development on air quality matters within the ES.

Issues

4.9.5. The main potential effects of the Proposed Development resulting from emissions to air are:

- effects on sensitive human and ecological receptors due to emissions from the combustion processes during operation of the Proposed Development ;
- effects on sensitive human receptors due to additional traffic generated during the construction and operational phases; and
- effects on sensitive human receptors due to dust emissions from construction activities.

The Applicant's case

4.9.6. Chapter 7 of the ES [APP-049] presents the Applicant's assessment of the likely significant effects due to emissions to air from construction, operation and decommissioning of the Proposed Development. The ES [APP-049] was updated during the Examination to reflect the requested change to the application, as described in Section 2.2 above. The updated Chapter 7 was presented as [AS-020].

4.9.7. The operation of the CCGT component will be the principal long term effect of the project. The CCGT will be fuelled by natural gas. The pollutants of interest are:

- oxides of nitrogen (NO_x) and by association nitrogen dioxide (NO_2), acid deposition and nutrient deposition from the operation of the CCGTs on natural gas, and from traffic exhausts;
- particulate matter (as PM_{10} and $PM_{2.5}$) arising from traffic exhausts and construction activity; and
- dust arising from construction activity.

4.9.8. The Applicant has confirmed [response to SWQ 2.1.4, REP5-005] that Selective Catalytic Reduction (SCR) was not being considered for emissions abatement and was not required to achieve Best Available Technology (BAT) or sufficiently low NO_x emissions from the Proposed Development. As such, the ES assessment [AS-020] does not consider impacts from increased ammonia concentrations.

4.9.9. It is possible that the Proposed Development would be developed on a phased basis (as described in paragraph 2.1.3 of this Report). For the purposes of assessing operational emissions, the air quality assessment presented in the ES assumes that the project will be of 1700 MWe capacity (ie. Scenario One). In order to present a worst case scenario, the ES air quality assessment assumes that both power trains will operate continuously at full output, although in practice it is likely that actual deployment would be less than this [AS-020].

4.9.10. The study area for the air quality impact assessment is a 15 km radius from the project site. This is based on guidance from the EA[5], which sets this as the boundary for screening impacts on sensitive ecological receptors. Impacts on sensitive human receptors are based upon a study area within this, but the principal focus of the assessment was on the maximum off-site impacts, impacts at the nearest sensitive receptor locations and impacts at locations with elevated baseline.

4.9.11. Baseline air quality conditions are set out in section 7.3 of ES Chapter 7 [AS-020]. Information on baseline conditions has been obtained from public sources, including RCBC, UK Automatic Urban and Rural Network (AURN), the Air Pollution Information System website and Defra baseline mapping. The ES confirms [AS-020] that there are no Air Quality Management Areas (AQMAs) declared within the study area. It is important to note that the existing processes on the Wilton International site form part of tha baseline against which impacts have been assessed.

4.9.12. Section 7.3.2 [AS-020] defines the sensitive receptors to air quality impacts from the Proposed Development as including human health and ecological receptors. These are identified and listed at Tables 7.12 and 7.13 of the ES, and shown on Figures 7.3 and 7.4 [AS-020].

4.9.13. The following residential locations were identified as specific Sensitive Human Receptors (distance from Project site in brackets): Redcar (4.5 km east); Lazenby (600 m south); Grangetown, West Lane Eston (1 km west and south-west); Dormanstown (4.5 km north-east); Grangetown, Ullswater Close, Eston (1 km west and south-west). The Wilton International industrial site and other industrial sites lie to the north of the Project and are not considered to be relevant as sensitive receptors.

4.9.14. Sensitive Ecological Receptors have been identified as: European designated sites within 15 km of the project; SSSIs within 15 km of the project; National Nature Reserves (NNRs), Local Nature Reserves (LNRs), local wildlife sites (LWS), Sites of Nature Conservation Importance (SNCIs) and ancient woodland within 2 km of the Project. Detailed consideration of potential effects on European designated sites is undertaken in Chapter 5: Habitats Regulation Assessment (below). Air Quality impacts on non-European Sites of ecological interest are considered in Section 4.10 below.

4.9.15. For ecological receptors, the deposition of acid and nutrient nitrogen is not directly modelled in the ES but is derived from the PC predicted at each sensitive ecological receptor for each pollutant of interest. The derivation is based on the Defra/EA guidance.

4.9.16. The Applicant's screening approach to determine whether the PCs were insignificant, or required further assessment, was undertaken by

[5] Department for Environment, Food & Rural Affairs and Environment Agency: Air emissions risk assessment for your environmental permit [on-line]. Available from: https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit

comparing the PCs, and where necessary the PECs, against the percentages of the critical loads set out in the Defra/EA guidance. In respect to long term impacts, principally this relied on the use of a 1% threshold, whereby if the PC is less than 1% of the environmental standard/critical load, then it is considered that LSE would not occur and further assessment is not required. In respect to short term impacts, this relied on the use of a 10% threshold, whereby if the PC is less than 10% of the environmental standard/critical load, then it is considered that LSE would not occur and further assessment is not required. ES Table 7.11 [AS-020] sets out the criteria used to determine whether further assessment of the impacts was required.

4.9.17. Where a PC exceeds the long term 1% criterion but the PEC is below 70% of the environmental standard, the Applicant considers this unlikely to make a significant contribution but explains that this may be subject to further ecological assessment where factors such as cumulative effects may require consideration and the PEC is close to the assessment criterion of 70% [AS-020]. The requirement for further assessment would be triggered by long term PCs of >1% and PEC of >70%; and by short term PCs of >10% and PEC of >70%.

4.9.18. With regard to local nature conservation sites, the Applicant has considered the PC to be insignificant if the short-term/long-term PCs are less than 100% of the relevant environmental standard. The Applicant states that there is no requirement under the EA guidance to calculate the PEC for local nature sites [AS-020].

ES assessment of effects during construction

4.9.19. For the assessment of potential effects from emissions of construction dust, PM_{10} and $PM_{2.5}$, a semi-quantitative assessment approach has been used. The Applicant notes that quantification of the PC and PEC is not required in this case [AS-020]. The assessment is based on guidance from the IAQM[6]; albeit at ES paragraph 7.108 [AS-020] the Applicant stated that *"this guidance has not been followed exactly".* I queried this statement in FWQ 1.1.13 [PD-008] and report on this later in this section of the report.

4.9.20. Emissions to air from on-site construction plant were considered to be negligible due to the size of the site, the distance to sensitive receptors and the schedule of operations. The Applicant refers to the criteria within guidance from the IAQM[7], which indicate, that an air quality assessment is required where there is an increase in HGV flows of more than 100 annual average daily traffic (AADT) or LDV flows of 500 AADT (for projects not within or adjacent to an AQMA). The ES predicts peak flows of 84 HGVs and 411 LDVs using the Westgate roundabout during Phase 1 of the construction [AS-020]. All other road links and phases are predicted to generate less traffic. On this basis, the Applicant considered

[6] IAQM (2014) Assessment of dust from demolition and construction

[7] IAQM (2017) Land-Use Planning & Development Control: Planning For Air Quality

that emissions to air arising from traffic during construction of the Proposed Development would generate negligible impacts and this matter was not considered further [AS-020]. I am satisfied that the effects of construction traffic have been appropriately addressed in the ES, and that there would be no significant effects from this source on the environment or on human health.

4.9.21. With regard to emissions of dust, PM_{10} and $PM_{2.5}$ during construction, the ES identifies that the site activities during construction of the Proposed Development represent a high risk of causing significant impacts on nearby industrial receptors (which are considered to be sensitive to dust ingestion). As a consequence the mitigation measures from the IAQM guidance[6] for a high risk site would need to be implemented. This would be secured through Requirements attached to the DCO, which incidentally would also protect nearby sensitive residential receptors from any significant impacts. On this basis, the Applicant concluded that the impacts from dust, PM_{10} and $PM_{2.5}$ during construction would be negligible and significant effects would not occur [AS-020]. I consider how the necessary mitigation measures are secured later in this report.

ES assessment of effects during operation

4.9.22. The potential for impacts on air quality due to emissions from the operational plant are assessed by comparing the predicted impacts against standards and guidelines for the protection of human health (ES Table 7.3), and when considering operational emissions, critical loads and levels for the protection of sensitive ecology (ES Table 7.4). The effects from the Proposed Development are assessed in terms of:

- Process Contribution (PC), which is the impact associated with emissions from the Project only;
- Predicted Environmental Concentration (PEC), which is the impact associated with emissions from the Project added to the existing background conditions.

4.9.23. The operational effects assessment has been undertaken using dispersion modelling and is primarily set out in Figures 7.5 – 7.7 and Tables 7.15 and 7.16 [AS-020]. For the purposes of the assessment, a stack diameter of 8m and a stack height of 75 metres have been used, as confirmed in ES paragraph 7.53 and Table 7.5 [AS-020]. The 75m stack height is considered by the Applicant to represent an acceptable balance between reducing the impact on air quality and visual impact. The Applicant provided a stack height sensitivity assessment with the application documents to support this premise [ES Annex E1, APP-069]. In broad terms concentrations of pollutants decrease as stack height increases. The ES states that a stack height of 75 m *"…is a stack height at which effects on sensitive human receptors are deemed to be acceptable and not significant on ecological receptors"* [para 7.53, AS-020].

4.9.24. Predicted impacts from NO_2 (long term annual mean and short term 1 hour mean) are set out at Table 7.15 of the ES [AS-020]. All results for the identified sensitive human receptors show that long term (annual

mean) PECs would be well within the relevant air quality standard (AQS) and are therefore deemed to be not significant.

4.9.25. For the short term hourly mean NO_2, all impacts on residential receptors are similarly deemed to be not significant. For the 1 hour mean, there is predicted to be a moderate impact at the maximum off-site (non-residential) location, described in ES Table 7.15 as being of 'moderate significance'. However, due to the PEC being well below 50% of the AQS (due to the low baseline), the Applicant did not consider this to be a material issue for the safe operation of the plant or sufficient to warrant further mitigation [AS-020; REP2-080].

4.9.26. The maximum offsite PC for short term 1 hour mean NO_2 (44.4 µg/m3) would therefore occur on elevated terrain to the south of the site where there appear to be no human or ecological receptors. In responding to FWQ 1.1.27, the Applicant acknowledged uncertainty in the spatial resolution of the model and the possibility that maximum impacts may arise at a sensitive human receptor as there are isolated properties in the area [REP2-080]. However, the PEC would still be well within the AQS, and as a result this does not represent a material issue for the safe operation of the plant. Accordingly the ES concludes that there would be no significant effects on human health due to emissions to air at any location.

4.9.27. For sensitive ecological receptors, the likely impacts from emissions to air are summarised in Table 7.16 of the ES [AS-020], which indicates that the emissions from the Proposed Development are not predicted to result in a significant contribution at any sensitive ecological receptor for any pollutant or impact of interest. Results are presented in full in Annex G1 [APP-073] (in respect of nationally and locally designated sites) and in Tables 1-4 of the NSER [REP1-001; superseded by REP5-005] (in respect of European sites). While baseline levels at some protected sites already exceed the critical limit, in all cases the additional contribution from the PC is considered to be insignificant. I discuss potential effects on nationally designated sites including SSSIs further in the Biodiversity section of Chapter 4, and on European sites in Chapter 5.

4.9.28. Operational traffic, including heavy goods vehicles (HGVs) and light duty vehicles (LDVs), is anticipated to be considerably lower than the screening thresholds of 100 HGV and 500 LDV daily averages (as set out in IAQM guidance[8]). As such, the ES reports that emissions arising from operational traffic would be negligible and this matter is not considered further. The Scoping Opinion [APP-063] confirmed that impacts from operational traffic emissions could be scoped out of the ES.

ES assessment of effects during decommissioning

4.9.29. The ES concludes that potential impacts during decommissioning are expected to be similar to those during construction. Specific measures

[8] IAQM (2017) Land-Use Planning & Development Control: Planning For Air Quality

will need to be put in place for the control of dust, PM_{10} and $PM_{2.5}$ emissions and mitigation measures will be similar those applied during the construction phase. Similarly, traffic impacts during decommissioning are anticipated to be no worse than the construction phase.

Cumulative effects

4.9.30. ES Table 7.17 [AS-020] identifies other developments with potential for cumulative impacts. A number were screened out as having no more than small, localised air quality impacts and therefore no potential for cumulative impacts with the Application project. Of those with potential, the Thor Cogeneration CCGT proposal at Seal Sands has had its licence revoked and therefore need not be considered further. A proposal to expand container terminal facilities at Teesport is assessed as having no potential for significant cumulative effects, as the only potential source of combustion emissions is considered to be an incremental increase in associated traffic. Two other schemes (North Sea Pipelines Ltd (ConocoPhilips) CCGT/CHP facility at Seal Sands, north of the Tees; MGT biomass facility, south of the Tees) were scoped in for further consideration as having cumulative human health effects. Cumulative impacts on sensitive ecological receptors were considered in ES Chapter 9 [APP-051] and in terms of in-combination effects, in the HRA [REP1-001].

4.9.31. In terms of human health impacts, the ES reports that the cumulative effects are not sufficient to lead to a risk of AQSs being exceeded [AS-020]. The baseline conditions in the vicinity of the Project are generally well below AQSs. The highest annual mean PEC is 79.3% of the AQS at Redcar, with the Proposed Development contributing 0.63% of the standard [AS-020]. Even if the much smaller (299MW) MGT Teesside biomass facility contributed a similar level to the Proposed Development, the cumulative PEC would still be well within the standard and so no significant cumulative effects are predicted [AS-020]. For short term concentrations, the ES states that the point of greatest impact for the 1 hour mean (in respect to the Proposed Development) will not be coincidental with the greatest impact from the other schemes identified [AS-020].

4.9.32. In-combination effects on European sites are discussed further in the HRA Chapter 5 below.

Applicant's proposed changes

4.9.33. These are described in paragraph 2.2.1 of this Report, above. The requested change comprised an increase in the maximum height of the turbine hall buildings from 25 metres (m) to 32 m, and an increase in the maximum height of the heat recovery steam generator (HRSG) buildings from 44 m to 45 m. As part of the Applicant's submissions, Chapter 7 of the ES was revised and updated to take account of the proposed changes [AS-020]. The Applicant also submitted a document entitled 'Implications of requested change to application on the EIA' [AS-009], which concluded that there would be no changes to the conclusions of the ES air quality assessment.

4.9.34. All of the relevant submissions were advertised and a summary of consultation responses is set out in [AS-027]. A separate consultation exercise was undertaken by the ExA [PD-006] and responses were published on the National Infrastructure Planning website [REP3-005 to REP3-012].

4.9.35. The Environment Agency responded to the consultation at Deadline 3 [REP3-012]. They stated that they considered that the proposed changes do not form a material change to the original DCO application. Based on the information submitted they did not anticipate that the proposed changes will generate a new or different LSE than that presented within the original DCO application. NE considered [REP3-008] that the proposed changes would not significantly alter the modelled dispersal areas for the emissions from the development.

4.9.36. The data presented suggests there is no change in environmental impacts as a result of an increase in height of the HRSG building from 44m to 45m. With regard to the turbine hall buildngs, I note that the air quality assessment in the ES had already modelled environmental impacts on the basis of a turbine hall height of 31m, and the proposal is for a height of 32m. It is reasonable to assume that the proposed 1m increase is unlikely to cause a significant change in environmental impact. The location of the turbine hall in relation to the stack is less likely to cause downwash effects. Having regard to the nature of the proposed changes and the consultation responses from the EA and NE, I am content that the changes would not alter the conclusions on significance of effect as presented in the original ES air quality assessment. I accepted these changes for consideration in the Examination [PD-013].

The Examination

4.9.37. My first written questions [PD-008] sought clarification on a number of issues related to the ES air quality assessment. Of particular significance I asked the Applicant to explain why, with reference to paragraph 7.96 of the ES [APP-049] it is appropriate to use current baseline concentrations to represent future baseline concentrations, particularly as paragraphs ES 7.103/7.104 indicate that NO_2 levels are in a downward trend (Q1.1.11). In response, the Applicant commented that the use of the current baseline is reasonable and represents a worst case approach. The Applicant stated that while it is expected that baseline NO_2 will reduce in future, the magnitude of these improvements is not well understood and using current baseline represents a precautionary approach [REP2-080].

4.9.38. I pursued this matter in my SWQs. I queried what information was available to support the Applicant's position of on-going improvements to background emission levels [as stated in REP2-080]. In response to Q2.0.3, the Applicant stated [REP5-005] that UK air quality has generally been improving in the long term, with substantial improvements since the 1960s-80s in terms of sulphur dioxide, oxides of nitrogen and transboundary pollution. The Applicant explained that this trend is continuing, particularly in regards to industrial facilities as a result of the Industrial Emissions Directive (which promotes continued emissions

improvement with the adoption of BAT in all such facilities) [REP5-005, Q2.0.3]. The Applicant has cited a document published by Defra[9] in support of this position [REP5-005, Appendix A]. I consider this position in respect to European sites in Chapter 5 of this Report.

4.9.39. The Applicant's approach was endorsed by the EA, NE and RCBC, and none of the respondents were able to provide any alternative robust data that could have been used as a substitute baseline.

4.9.40. In the FWQs at Q1.1.13 [PD-008] I requested a further explanation of why the IAQM guidance[6] on the assessment of dust from demolition and construction sites has not been followed exactly. In response, the Applicant stated [Q1.1.13, REP2-080] that the principle of the IAQM guidance is that all impacts of dust emissions from construction can be mitigated to negligible residual impacts. The Applicant noted that the IAQM guidance does not determine "significance", but rather risk of significant impacts at sensitive receptors. The Applicant explained that the site activities during construction of the Proposed Development are within the 'high' risk band and there is no need to go through the stepped process set out in the IAQM guidance [Q1.1.13, REP2-080]. As a consequence the mitigation measures from the IAQM guidance for a high risk site would need to be implemented. The Applicant noted that construction activities for this type of site would never be undertaken completely unmitigated, and therefore it is meaningless to present an unmitigated case. I am content that the assessment has accounted for a worst case having considered the site as 'high risk'.

4.9.41. Q1.1.21 [PD-008] sought further explanation of how dust mitigation during construction would be secured in the dDCO. Requirement 13 secures provision of a detailed Construction Environment Management Plan (CEMP). The Applicant stated that the framework CEMP [APP-081] had been updated and submitted at Deadline 2 [REP2-008] to reflect the proposed mitigation measures in the ES air quality chapter [APP-049]. The proposed measures are tabulated within the framework CEMP (ES Volume 2, Annex L) [APP-081].[10] The Applicant states that the dust mitigation that will be used during the construction works is proven and has been used extensively on construction projects throughout the UK, including in urban areas and on very large construction projects [REP2-080]. I am content that dust mitigation during construction have been appropriately addressed in the ES and that no likely significant effects on the environment or human health would occur.

4.9.42. Q1.1.15 [PD-008] requested further explanation of why, when a moderate impact for NO_2 1 hour mean at the maximum off-site location (described in ES Table 7.15 as being of 'moderate significance') has been predicted, no further mitigation of air quality emissions is considered

[9] Source: Defra 'Air pollution in the UK 2016' published September 2017

[10] The framework CEMP was further updated during the course of the Examination.The content of the final version is addressed in the draft DCO section below (Section 8).

necessary. At the ISH on Environmental Issues[11] the Applicant confirmed that the moderate impact would occur over a relatively small area where there are few or no sensitive receptors, and where the existing baseline is well below the relevant AQS, so that the PEC would not exceed 50% of the AQS. The Applicant also stated that there are no areas where there would be moderate impacts and where the PEC would exceed the critical limits for NO_2 [REP4-011, paras 2.65 – 2.67]. In response to Q1.1.23, the Applicant commented further that the proposed power plant is designed to meet current BAT, and is designed with a stack height that also represents good practice design. With due consideration of the scale and footprint of the significant impacts, and that the plant meets BAT, no further mitigation is deemed necessary.

4.9.43. In my FWQ 1.1.27 [PD-008], I asked the Applicant to confirm whether there were any sensitive human or ecological receptors at the point of maximum off-site impacts. In response, the Applicant explained [REP2-080] that *"…there do not appear to be any sensitive human or ecological receptors"* at the point of maximum off-site impact, but did note that there are some isolated properties in the area. At Deadline 4, the Applicant provided further details of the location of the moderate impact, confirming that it occurs on two small areas of steeply sloping wooded hillside to the south of the site where there are no sensitive residential receptors [REP4-001].

4.9.44. Q1.1.26 [PD-008] requested further explanation of what assumptions had been made about the location of the stacks as part of the ES air quality modelling and HRA. The Applicant was also asked to explain why, if the air quality modelling was carried out on the basis of a 75 metre stack height, the dDCO allows for a lower stack height in Requirement 4. In response, the Applicant specified the stack locations used in the air quality assessment, as follows [REP2-080]:

- Western stack: 456437, 520398
- Eastern stack: 456525, 520438

4.9.45. With regard to the stack height the Applicant explained that the 75m stack height used in the ES was identified as the optimum compromise between minimising ecological impacts (noting that this was a height at which no potentially significant impacts on both human health and habitats were identified), and visual impacts. Requirement 4 as originally drafted would allow for a stack height lower than 75 metres. The Applicant comments that from an air quality perspective this may be feasible in practice as *'a lower stack height will not necessarily result in unacceptable impacts'.* However, the threshold for potential likely significant effects would be exceeded at some habitats with a lower stack height. The stack height of 75 m was therefore used in the air quality impact assessment, on the basis that this is the most likely stack height that would be adopted for the final project design.

[11] Held on Wednesday 13 June 2018

4.9.46. At the ISH on Environmental Matters I asked whether the stack height could be fixed at 75 m, and for comment on the implications of a lower stack height. The Applicant responded that they wish to retain the ability to seek a reduction to the height below 75m, as envisaged in the drafting of dDCO Requirement 4, to allow visual impacts to be minimised. It would be for the Applicant to demonstrate that a lower stack height would be acceptable in terms of effects on sensitive human and ecological receptors at the Environmental Permit stage. If it could not do so, the EA would not issue a Permit in respect of a lower stack height. The Applicant confirmed that 75 m has been taken forward as the optimum stack height based on the knowledge that negligible impacts on sensitive human receptors would occur. If a lower stack height was selected, the EA would undertake screening and if necessary carry out an Appropriate Assessment at the permitting stage in respect of the Habitats Regulations. It was explained that 65 m is likely to be the lowest feasible stack height [REP4-011].

4.9.47. I pursued the issue in my SWQs [PD-012]. Q2.1.1 posed the question that in the absence of a parameter which precludes a stack height less than 75m, the proposed dDCO may result in a development that gives rise to LSE which have not been assessed or are different from what has been assessed in the ES. In response, the Applicant reiterated that in that event, the EA would not issue a permit in respect of the lower stack height [REP5-005]. At Deadline 5, the Applicant proposed some additional wording in Requirement 4(3) of the dDCO (Version 4) [REP5-001] which specified that if the Applicant wanted to construct the main stacks at a height below 75m, it would have to submit a further assessment to the "local planning authority/Environment Agency" to demonstrate that no new or materially different effects to those identified in the ES would arise from the lower stack height; or put forward additional measures capable of mitigating any LSE which would arise from the lower stack height. The Applicant submitted a further iteration of the dDCO at Deadline 6 [version 5, REP6-008], with the wording of Requirement 4 remaining as per version 4 [REP5-001].

4.9.48. The air quality assessment presented in the ES [AS-020] is based on an 'optimised' 8m stack diameter, with no sensitivity testing having been submitted with the application. A parameter for the stack diameter was not specified in the dDCO submitted with the application [version 1, APP-005]. In light of this, the diameter of the proposed stacks was also raised at the ISH on Environmental Matters. I asked whether the diameter could be fixed in the dDCO at 8 m, with possible flexibility of + or – 0.5 m. The Applicant responded that the final stack diameter will not be known until the turbine has been selected. While there would only be small variations in the stack diameter, these would be confirmed when the turbine manufacturer was selected, and fixed in the EP [REP4-011].

4.9.49. The issue was pursued in SWQ2.1.3 [PD-012] which requested the Applicant to explain the extent to which the ES Air Quality assessment addresses the question of flexibility in the diameter of the stacks, or alternatively amend the dDCO to reflect the relevant parameters in the ES. The Applicant responded that any changes to stack diameter would

be limited and result in negligible change in impacts [REP5-005]. As with stack height, the Applicant stated that it would include additional wording to the dDCO to ensure that the stack diameter would be 8 m unless the Applicant could demonstrate that a different diameter would not have any new or materially different effects [REP5-005]. However, this wording was not included in version 4 of the dDCO submitted at Deadline 5 [REP5-001] or version 5 of the dDCO submitted at Deadline 6 [REP6-008].

4.9.50. On 5 September 2018 I issued a Rule 17 Request for further information on a number of matters relating to Air Quality [PD-014]. This drew the Applicant's attention to the fact that the assessment of air quality effects within the Applicant's ES and HRA has assessed a stack height of 75 m (and nothing less) and a stack diameter of 8 m. I considered that this approach impedes the SoS's ability to authorise the development to an extent which differs from that assessed. I noted that any assessment which may be carried out by the Environment Agency in relation to the EP cannot substitute the assessment which must be made by the SoS in keeping with his statutory duty under the EIA Regulations (or HRA regulations). To enable the SoS to lawfully grant development consent in the way prescribed by the dDCO, I considered that the Applicant would need to assess the impacts of a stack of 'up to 75 metres' and put this information before the Examination.

4.9.51. In [PD-014], I also drew attention to relevant case law[12] and noted that the drafting of dDCO Requirement 4 at that time [version 5, REP6-008] may result in the local planning authority authorising a change to the Proposed Development which is beyond what is assessed in the ES. The Applicant was asked to consider further drafting changes to the dDCO in order to fix the stack height and diameter so that it aligned with what has been assessed in the ES, and to comment on the above points.

4.9.52. In response to the Rule 17 Request for Information the Applicant proposed a further amendment to dDCO Requirement 4 [REP7-005], to fix the stack height at 75 m (Requirement 4(2)(b), albeit still subject to 4(3) broadly as set out above). The Applicant made the following comments in respect of stack height in [REP7-010]:

'The Applicant considers that the proposed wording appropriately constrains the ability to alter the stack height and would not allow the relevant planning authority to authorise a change which is beyond the remit of what has been assessed in the submitted EIA. This type of wording for a requirement, i.e. to allow a small degree of flexibility, has been accepted in many approved DCOs to date.

The Applicant is aware of the inappropriate use of tailpiece conditions (which applies equally to Requirements in DCOs) as referred to in the

[12] R. (on the application of Hubert) v Carmarthenshire CC Queen's Bench Division (Administrative Court), 05 August 2015; R. (on the application of Midcounties Co-operative Ltd) v Wyre Forest DC Queen's Bench Division (Administrative Court) 27 March 2009

cases listed. We do not consider that the wording falls foul of the 'Midcounties principle'. It is not an open ended requirement to change the stack height and appropriately restricts the basis on which any change in stack height can be permitted by the relevant planning authority in consultation with the Environment Agency.

The Applicant would like to retain some flexibility in stack height pending the final decision on a technology provider, in particular in case there is an opportunity to reduce the stack height further below 75 m to address representations made by the local community with regards to the potential visual effects of the Proposed Development.' [REP7-010]

4.9.53. The Applicant has consistently maintained the position that flexibility to allow a lower stack height should be retained in the dDCO and that concerns regarding the potential for different effects to those assessed in the ES and HRA could be addressed at EP stage. In order to try and address the issue, the Applicant's final version of the dDCO (Version 7)[REP8-005] contains the following provision under Requirement 4(3): *'If the undertaker wants to construct the main stacks at a height of less than 75m above existing ground level, the undertaker must first prepare and submit another assessment to the relevant planning authority for approval in consultation with the Environment Agency which demonstrates that there will be no new or materially different environmental effects to those identified in the environmental statement arising from the proposed lower stack height.'*

4.9.54. With regard to my concerns about stack diameter, the Applicant submitted a 'Stack Diameter Sensitivity Study' at Deadline 7 [REP7-014]. The study considers dispersion modelling for two 850 MW thermal gas turbines at a stack height of 75 m and stack diameters of 7.0m, 7.5m, 8.0m and 8.5m.The study shows that a stack diameter range of 7.0m to 8.0m would not make a material difference to conclusions presented in the ES air quality assessment [AS-020]. Notably, [Table 2, REP7-014] demonstrates that the maximum concentrations of NO_x would be lower if the stack height was 7m or 7.5m (as such, the ES assessment presents a worst case). The Applicant concludes that the results support carrying forward a range of stack diameters for an 850 MW turbine whereby the level of air quality impact for the range is below the threshold of insignificant contributions for all protected ecological sites. At Deadline 7, Requirement 4 of the dDCO (version 6) was amended to specify an internal stack diameter of between 7.0 and 8.0 m [REP7-005].

4.9.55. The Applicant's final version of the dDCO [version 7, REP8-009] was submitted at Deadline 8, with the wording of Requirement 4 remaining as per version 6 (subject to non-material punctuation changes) [REP7-005].

4.9.56. The implications of alternative siting within the Rochdale Envelope (in terms of the findings of the assessments) were explored at the ISH on Environmental Matters, particularly as regards the precise locations of the stacks. The Applicant explained that the location of the stacks was largely fixed based on the tight limits of lateral deviation for the power station complex, as shown on the Works Plans [REP4-011]. The lateral

deviation is not expected to be greater than 20 m from the position assumed in the air quality assessment. The Applicant stated that any minor lateral movement of the stacks would not change the conclusions of significance of effect presented in the ES [REP2-049]. The Applicant considers that an allowance for lateral movement is needed owing to considerations such as foundation piling on the site, if for example; final turbine design or geotechnical surveys require repositioning of the final stack location [REP4-011]. The EA initially requested that the stack locations should be fixed [REP2-079] but by Deadline 5 accepted that the limited degree of lateral flexibility being sought would be acceptable [REP5-008].

4.9.57. Q1.1.6 asked the Applicant and the EA to clarify the impact of the Project on acid and nitrogen deposition on protected habitats. Table 7.1 of the ES [AS-020] shows that the Predicted Environmental Contribution/Critical Load (PEC/CL) is greater than 100% at 7 habitat locations. In response, the Applicant states that this is due to pre-existing high background levels rather than process contributions. EA guidance (Environment Agency: 'Air emissions risk assessment for your environmental permit)[13] advises that the threshold below which impacts due to any one project in isolation is insignificant, irrespective of existing baseline, is 1% of any Critical Limit or Critical Load. The air quality impact assessment [APP-049] demonstrated that the 1% threshold is not exceeded at any location. In this connection, the EA stated in their response to Q1.1.7 that the 1% threshold is a screening level below which environmental impact would be deemed insignificant [REP2-079]. In response to Q1.2.8 the Applicant explained that CLs are widely exceeded throughout the UK due to elevated baseline. However this does not mean that a project will result in likely significant effects; rather it means that the project must demonstrate that the increment in impact due to that project is not significant. Underpinning this, the Applicant stated that there is a general trend in improving air quality which is reducing the baseline, as reported above.

4.9.58. Q1.1.7 and SWQ2.2.4 requested the Applicant to provide updated versions of Tables G1.4-G1.7 of Annex G1 [APP-073] and Tables 1-4 of the HRA Report [REP1-001] with PEC/CL (%) metrics for all sensitive ecological receptors for ease of reference and understanding. These were provided at Deadline 5 [Appendix 2, REP5-005]. These demonstrate that there are no ecological receptors where the PC would exceed 1% of the CL for long term impacts at statutory sites, or where the PC would exceed 100% of the CL for non-statutory sites, and accordingly that the EA significance thresholds were not exceeded.

4.9.59. In addition to responding to questions and oral submissions detailed above, the Applicant continued discussion with IPs during the Examination to resolve outstanding issues and achieve common ground where possible.

[13] https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit#page-navigation

4.9.60. In the final signed version of the SoCG with the EA [AS-003], dated 27 September 2018, the EA agrees that the relevant information sufficient for the DCO process has been provided by the Applicant in respect of air quality. It is also agreed that the EA is not aware of any reason why it would not be possible to satisfactorily address relevant air quality matters as part of the EP application process.

4.9.61. The Applicant concluded a signed SoCG with Natural England at Deadline 2 [REP2-009]. It was agreed that all comments made by NE in respect of EIA scoping and the Section 42 consultation have been addressed by the Applicant within the ES and that this resulted in NE advising that it has no objection to the project. Having regard to the ES it was agreed that the impacts of the Project on ecology are insignificant and that all protected species issues have already been addressed [REP2-009]. For this reason, no specific mitigation is required. It was further agreed that the relevant Requirements contained in Schedule 1 of the draft DCO provide an appropriate means by which to secure the biodiversity mitigation set out in the ES. No matters to resolve were identified.

4.9.62. A signed SoCG with Tees Valley Wildlife Trust (TVWT) records the following areas of agreement [REP2-047]. TVWT is neither in favour nor opposed to the Proposed Development, but accepts that there are benefits associated with the development. The need for the development is accepted as is the importance of the development and the Wilton site to employment and the economy. It is agreed that the site itself has low ecological value. TVWT considers there may be some negative impacts on communities in relation to noise and visual amenity. Of particular relevance to the topic of air quality and emissions is the agreement that the impacts of the Proposed Development on ecology are not significant [REP2-047].

ExA conclusions

4.9.63. By the end of the Examination neither the EA nor NE, nor any other IP had any outstanding objections to the proposal on air quality grounds. An EP will be required, and Air Quality impacts will again be rigorously assessed at that stage. In responding to Questions during the Examination, the EA made it clear that it cannot make any comment which could indicate pre-judgement of any future Environmental Permit application. However the EA indicated in their SoCG with the Applicant [AS-003] that on the basis of the information in the ES and other information provided during the course of the examination, there was no apparent reason why a permit would not be issued for this Project.

4.9.64. With regard to the construction phase, the levels of traffic predicted are below the the criteria in IAQM guidance[8] where a significant effect on air quality would be expected. The ES identifies a high risk of dust being generated during the construction phase with potential to impact on sensitive receptors nearby, including industrial and residential receptors. For this reason a level of mitigation appropriate to a high risk construction site is proposed, which would be secured through the implementation of a CEMP, setting out a range of measure to minimise

dust and other environmental impacts. This is secured through Requirement 13 of the Recommended dDCO.

4.9.65. The main pathway for operational impacts on sensitive human and ecological receptors is atmospheric pollution from emissions to air and all combustion processes including CCGT proposals have potential to have adverse impacts. The air quality assessment supporting the Proposed Development application has been carried out using critical assumptions in respect of the height and diameter of the main stacks, at 75m and 8m respectively. On this basis I am satisfied that the information submitted in the ES, together with other information submitted during the course of the examination, is sufficient to reach a conclusion that the Proposed Development will not have any LSE on human health or on sensitive ecological receptors.

4.9.66. With regard to stack height, I understand why the Applicant wishes to retain limited flexibility, primarily to explore the potential for minimising the visual impact of the Proposed Development by adopting a lower stack height. However I am not satisfied that sufficient information has been provided for the purposes of the DCO to demonstrate the potential impacts of a stack height below 75m. In my judgment the ES assessment and conclusions are specific to a stack height of 75m. The effects of any lower stack height have not been presented to the Examination. Having regard to the relevant case law (as set out above), I consider that it is not open to the SoS to approve a DCO which would potentially permit a change to the Proposed Development which could result in LSE beyond those assessed in the ES. I reach a similar conclusion in respect of potential effects on European Sites at paragraph 5.4.54 below. I therefore consider that the proposed wording of Requirement 4(3) in the Applicant's final dDCO [REP8-009] is not acceptable and discuss this further in considering the DCO Requirements in Chapter 8 below.

4.9.67. I acknowledge that the Proposed Development would also require an Environmental Permit, and that the EA which is the responsible authority in this instance has indicated that it would assess the impacts of a lower stack height at that stage. I am have also had regard to paragraph 5.2.4 of NPS-EN1, which states: 'The EA will require the exhaust stack height of a …fossil fuel generating station … to be optimised in relation to impact on air quality' and accordingly that the SoS *'need not, therefore, be concerned with the exhaust stack height optimisation process in relation to air emissions, though the impact of stack heights on landscape and visual amenity will be a consideration'*. However in the absence of the effects of lower stack heights being fully addressed in the ES, I consider that the SoS is not empowered to make a DCO which would permit this level of flexibility, having regard to the caselaw referred to in Paragraph 4.9.51 and Footnote 12 above.

4.9.68. With regard to stack diameter, the Applicant has submitted information at Deadline 7 [REP7-014] which demonstrates that reducing the diameter to 7.0m would not make a material difference to the conclusions presented in the ES assessment. [REP7-014] illustrates that the maximum concentrations of NO_x would reduce with a stack diameter of

7m or 7.5m (as opposed to the 8m diameter utilised in the ES assessment) and I am therefore content that the ES has assessed the worst case in this respect. I am satisified that this degree of flexibility has been adequately assessed in the ES and other information provided by the Applicant during the Examination. I therefore conclude that the Applicant's drafting in respect to flexibility of the stack diameter (between 7-8m) in the final version of the dDCO [version 7, REP8-009] would be acceptable.

4.9.69. Having regard to my conclusions on stack height and diameter above, I am satisfied that the Proposed Development would accord with all Directives, legislation and policy requirements and that air quality and emissions management matters are adequately provided for and secured in the Recommended DCO. This conclusion is subject to further discussion on deposition matters in respect of HRA in Chapter 5 below.

4.10. BIODIVERSITY, ECOLOGY AND NATURAL ENVIRONMENT

4.10.1. This section focuses on impacts on the application site itself, protected and priority habitats and species and on nationally and locally designated ecological sites in the surrounding area. Impacts on European sites are considered in Chapter 5 on Habitats Regulations Assessment below.

Policy

4.10.2. 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.

4.10.3. Paragraph 5.3.7 of NPS EN-1states 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.

4.10.4. 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.

The applicant's case

4.10.5. The Applicant has assessed the potential impacts to ecological receptors in Chapter 9 of the ES [APP-051], supported by information in ES Annexes G1 (Effects of Air Quality) [APP-073], G2 (Ecological Appraisal)

[APP-074] and G3 (Breeding Bird Survey) [APP-075].The assessment methodology follows the guidelines from the Chartered Institute of Ecology and Environmental Management (CIEEM) (2016.)[14] The approach to assessing the significance of effects on habitats from the project's emissions is considered in detail in Chapter 7 of the ES. The approach for assessing effects on European designated sites is described in the HRA report (ES Annex H) [REP1-001]. This approach is also used for SSSIs, Local Wildlife Sites (LWS) and Ancient Woodlands identified as having potential to be affected by the Proposed Development, although for LWS, insignificance is achieved where the process contribution is < 100% of the relevant critical level or critical load (CL).

4.10.6. The application site is a former industrial site comprising extensive areas of hardstanding, with some vegetation cover around the margins of the site. Walkover surveys carried out in October 2016 found it supported only a few common habitat types, which did not support any flora or fauna species of importance [APP-051]. ES Table 9.8 [APP-051] identifies protected and priority species which have been observed in proximity to the application site, using data obtained from the Environmental Records Information Centre North East.

4.10.7. The ES explains that the site is of negligible ecological value and that NE agreed that detailed ecological surveys were not required [APP-051]. The Applicant did however undertake breeding bird surveys in April and June 2017 given that the habitats on site had some suitability for ground-nesting birds. Requirement 11 of the Recommended DCO secures production of a Ground Nesting Birds Statement.

4.10.8. All effects have been predicted to be 'not significant' allowing for all habitats to be lost within the application site boundary [APP-051]. The ES reports that the general absence of species around the Project site means that secondary impacts from noise, lighting, water abstractions/discharges and the presence of people during construction/operation will not result in significant effects [APP-051]. The Applicant's SoCG with NE records agreement that the impacts on ecology on the application site are insignificant and that all protected species issues have been addressed [REP2-009].The ES assessment also considered SSSIs (located within 15 km of the application site) and local wildlife sites (located within 2 km of the application site) which are sensitive to air quality changes. Nine SSSIs were scoped into the assessment as being potentially sensitive to air quality changes. These are listed in Table 9.4 of ES Chapter 9 [APP-051]. Two locally designated sites (LWS) were scoped into the assessment, as shown in ES Table 9.5 [APP-051]. Part of Wilton Woods Complex (which includes ancient woodland) and Eston Moor LWSs fall within the 2 km radius. The locations of SSSIs and LWSs are identified on Figure 9.1 of the ES [APP-051]. The potential effects of air pollutants resulting from operation of the Proposed Development on nationally and locally designated sites are

[14] CIEEM (2016) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal, 2nd Edition

summarised in Section 9.5.2 of ES Chapter 9 [APP-051], with the full results provided in ES Annex G1 [APP-073].

4.10.9. No significant effects on such nationally and locally designated sites were predicted in the ES. With regard to possible cumulative effects, the ES concludes that it is very unlikely that insignificant additions of air pollution from the project would combine with insignificant contributions from other identified proposed industrial developments to result in likely significant effects on the designated sites. No significant cumulative effects from air pollutants during operation were predicted.

4.10.10. No specific mitigation is therefore required, on the basis that all the effects of the proposed Development are not significant. The outline CEMP [Table L4.6, REP7-002] contains standard mitigation and good practice in relation to advice on construction with regards to nesting birds and mammals; these details would be further developed in the detailed CEMP secured by Requirement 13 in the Recommended DCO.

The Examination

4.10.11. Setting aside the matter concerning European sites in the context of HRA (which I consider in Chapter 5 of this Report), there were no particular concerns raised by IPs during the Examination in respect to biodiversity and wildlife.

4.10.12. NE's written representation [REP2-071] concluded that the air quality assessments and ES (in particular Chapter 7 on Air Quality [APP-049] and Chapter 9 on Ecology and Nature Conservation [APP-051]) show that process contributions with regards to oxides of nitrogen, acid deposition and nutrient nitrogen deposition are below the level considered significant for all designated sites. This conclusion is reflected in the Applicant's SOCG with NE [REP2-009]. A number of written questions were put to the Applicant, the EA and NE during the Examination concerning screening thresholds for likely significant effects on ecological receptors due to atmospheric emissions, and the assessment of in-combination effects. These were of particular relevance to the consideration of HRA and are considered in detail in Chapter 5 of this report.

4.10.13. The signed SoCG with NE [REP2-009] records agreement that the Proposed Development would not result in any significant effects on ecological receptors. The SoCG also records NE's agreement that Requirements 10, 11, 12, 13 and 16 of the dDCO appropriately secure the biodiversity mitigation set out in the ES .

4.10.14. A SoCG with Tees Valley Wildlife Trust (TVWT) was also submitted during the Examination, which records agreement that impacts on ecology would be acceptable and not significant [REP2-047]. Notwithstanding this, the Applicant has agreed to provide biodiversity enhancement measures to the Tees Valley Wildlife Trust, as detailed in the SoCG.

4.10.15. The signed SoCG with RCBC records agreement that impacts on ecology would be acceptable and not significant [REP4-009].

4.10.16. During the course of the Examination, NE issued notification of the proposed enlargement of the Teesmouth and Cleveland Coast SSSI. The implications of this were considered in the Applicant's HRA addendum, which confirmed that there was no change to the conclusion of no likely significant effects presented in the ES [REP7-004]

4.10.17. With regard to cumulative effects, the EA [REP2-079] and NE both confirmed that they were unaware of any additional plans and projects in addition to those identified in Table 7.17 of ES Chapter 7 [REP2-079 & REP2-071 ANNEX C].

ExA Conclusion

4.10.18. Taking all matters into consideration, I conclude that the ES assessment of effects on designated sites, protected and important species and habitats has complied with the policy requirements in Section 5.3 of NPS EN-1. The Applicant has demonstrated that there would be no likely significant effects on biodiversity or wildlife as a result of the construction, operation and decommissioning of the Proposed Development. For the avoidance of doubt, impacts on European Sites in respect to HRA have been considered separately in Chapter 5 below.

4.11. ECONOMIC AND SOCIAL EFFECTS

Policy considerations and ES findings

4.11.1. Paragraph 3.2.1 of NPS EN-1 identifies the generally positive socio-economic effects derived from electricity generation to meet nationally identified energy needs at the national level. Paragraph 5.12.1 of EN-1 identifies that there may be local impacts that are both positive and adverse.

4.11.2. Paragraph 15.12.6 of NPS EN-1 requests the SoS to have regard to the potential socio-economic impacts of new energy infrastructure identified by the Applicant and from any other sources that he considers to be both relevant and important. Paragraph 15.12.7 emphasises that in view of the need for electricity generation infrastructure, 'limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence'. Paragraph 15.12.8 asks the SoS to consider 'any relevant positive provisions the developer has made or is proposing to make to mitigate impacts'.

4.11.3. RCBC Local Plan Policy ED 6 promotes employment development within existing industrial estates and business parks. Specialist uses, such as heavy processing industries and port logistics, will be focussed in identified areas totalling 405 ha, including 221 ha at Wilton International Site.

4.11.4. Whilst Policy ED6 does not make any specific reference to electricity generation, the application site has historically been used for electricity generation, and the wider Wilton site includes uses which are rely on the availability of an electricity supply.

4.11.5. The Applicant has assessed the socio-economic effect of the Proposed Development in the ES Chapter 13 [APP-055] . It concludes from this assessment that the socio-economic effects of the project reflect the policy ambitions of NPS EN-1.

The Examination

4.11.6. Amongst those who submitted relevant representations (RRs) there was widespread support for the project with regard to its socio – economic effects. The Tees Valley Combined Authority and Tees Valley Mayor (RR-001 & RR- 012) considers that 'bringing back to use a gas fired generating station will make a major contribution to the ambitions set out in the Tees Valey Strategic Economic Plan, which identifies economic growth and sustainable jobs at its core.' A local resident was 'very pro local job developments' (RR-002). RCBC stated that 'should this project be approved, its positive impact will reach far beyond the borders of Redcar and Cleveland, and the wider Tees Valley. The projected 1,000 construction jobs over the 3 year build period as well as the – permanent jobs once the plant is operational can only have a positive impact on our local economy where current unemployment rated are well in excess of national averages at 3.5% versus 1.9%. Furthermore, many of the permanent jobs will be highly skilled, paying above the regional average salary… these will be further enhanced by the hundreds of supply chain jobs created over the 30 year lifespan of the power station.'

4.11.7. The North East Process Industry Cluster (NEPIC) Limited considers the key advantage of the project would be 'to provide competitively priced energy for major users, making Wilton an attractive location for energy-intensive industries to locate. The project enhances the offer provided from existing infrastructure on the Wilton Site, and strongly compliments the work to be undertaken in the next few decades on the South Tees Development site, the biggest industrial regeneration opportunity in the UK for decades. The Tees CCPP project is an important component in the plan to maintain and enhance the competitive position of Teesside as one of the most significant regions for energy intensive process engineering and manufacturing, and is a vital part of attracting more investment into the area.'

4.11.8. It is agreed in the SOCG between the Applicant and RCBC that during construction, the Proposed Development is anticipated to result in direct investment of £700 million and employment for 98 full-time equivalent ('FTE') jobs spread over the construction period for Scenario One and employment for 131 FTE jobs spread over the construction period for Scenario Two.

4.11.9. This would bring both direct economic and employment benefits and additional benefits arising from indirect and induced expenditure by suppliers and employees of the Proposed Development. Beneficial employment and economic effects are anticipated during construction. It is also agreed that through this, the Proposed Development would contribute to meeting RCBC's Core Strategy policy aspiration that developments at the Wilton International Site will act as drivers of the Tees Valley economy.

4.11.10. During operation, the Proposed Development is expected to generate 247 FTE jobs (60 as a direct result of the Proposed Development and approximately 187 jobs within the local economy), bringing economic benefits through direct and indirect investment in the local, regional and national economy. In turn this would contribute towards the Tees Valley Economic Strategy which aims to create 25,000 additional jobs and attract investment of £2.8 billion into the Tees Valley economy. Beneficial employment and economic effects are therefore anticipated during operation.

4.11.11. More broadly, operation of the Proposed Development would contribute to security of energy supply across the UK, supporting the economic and social activities which depend on a reliable, available and economic source of energy.

ExA conclusions

4.11.12. It was widely held in relevant representations and amongst IPs that the socio-economic effects of the Proposed Development would be beneficial to employment and the economy. I agree that the Development would be beneficial to the local, regional and national economy. To ensure that benefit would be experienced locally the Applicant has agreed and executed a S106 obligation with RCBC dated 5 October 2018[AS-033]. This requires the owner to use reasonable endeavours to maximise job opportunities for local residents, especially those who live locally within deprived communities, and to provide and implement a Construction Training and Employment Method Statement for the duration of the construction period. It must also use reasonable endeavours to open up opportunities for local businesses to bid for development contracts. Provision is included for the Applicant to make financial contributions to establish 'Routeways' into employment for local people, and workshops and coaching sessions to develop the capacity of local suppliers. In this respect, I am satisfied that best endeavours will be used to ensure that local social and economic benefit will be maximised.

4.11.13. On this basis, I conclude that the proposed Development will give rise to significant net positive social and economic effects at both national and local levels and that the objectives of NPS EN-1 and development plan policy will be met.

4.12. HISTORIC ENVIRONMENT

Policy Considerations

4.12.1. NPS EN-1 sets out policy for the historic environment at section 5.8. No issues of non-compliance were raised and so, whilst considered, this policy is not discussed in detail. NPS EN-2 raises no historic built environment issues that are particular to gas combustion plant. The plant would make use of existing infrastructure for the gas and electricity connections and no conflict with NPS EN-4 arises.

The Applicant's case

4.12.2. ES Chapter 12 [APP-054] considers the impacts from construction, operation and decommissioning of the Proposed Development on the historic environment. Historic built environment matters were not widely raised in representations and did not become a matter addressed at hearings. However, I have considered the approach taken to the historic built environment in the ES and the design of the proposed development. I sought advice in this regard from RCBC as local planning authority and Historic England (HE) as the statutory adviser to the government on the historic built environment.

4.12.3. ES Chapter 12 [APP-054] states that the presence of the Wilton International Site and other elements of industrial infrastructure means that the magnitude of change to the majority of heritage assets is considered to minimal to small, with the overall level considered to be negligible to minor adverse and therefore not significant.

4.12.4. With regard to impacts on archaeology, the ES states that the information base provides no indication that there are sub-surface archaeological remains from any period at the site. Furthermore, given the level of ground disturbance on the site since 1990, there is low/nil potential for the survival of archaeological remains, which would have been either severely truncated or completely destroyed during previous construction works on the site [APP-054].

4.12.5. The Scoping Opinion [APP-063] agreed that impacts to buried archaeology could be scoped out of the ES assessment, subject to agreement with RCBC's archaeological advisors and (if required) HE. RCBC agreed that there are unlikely to be any archaeological concerns if the site is contained within the footprint of the former power station, as is proposed by the Applicant. Impacts to buried archaeology have therefore been scoped out of the ES and the assessment is principally concerned with impacts to the settings of heritage assets.

4.12.6. The ES identifies a number of heritage assets within a 2km study area and a wider 5km search area around the application site. The assessment concludes that none of the designated heritage assets within the area would experience anything more than small impacts on the role of setting in an asset's significance and these effects would not be significant. The Applicant considers that itigation above and beyond that set out to reduce possible landscape and visual impacts would not be required.

4.12.7. Of all the heritage assets in the area, the defensive Site at Eston Nab (a Scheduled Monument, the location of which is illusted on [APP-031]) is considered the most likely to be affected by the Proposed Development. However the vista from Eston Nab is dominated by the existing heavily industrialised nature of the Teesside Landscape. The level of effect on Eston Nab is therefore minor and not significant.

The Examination

4.12.8. HE commented as follows on the original application:

'The proposed Tees Combined Cycle Power Plant will not directly impact any heritage assets but does fall within the setting of a number of nationally designated assets. Historic England's statutory remit is the impact of the proposal on the most significant of these – notably, the scheduled monuments at Eston Nab, the grade II listed Church of St Cuthbert and a number of buildings within the Kirkleatham Conservation Area – as well as the conservation areas at Wilton, Kirkleatham and Yearby'.*

'The photomontages and viewpoint descriptions (contained within chapter 11 and annex K) are particularly useful in that regard and show that the visual impact on the designated heritage assets that fall within Historic England's statutory remit for consideration is limited, and where the development is visible it will not unduly affect the significance of the assets. Of all the surrounding heritage assets, the setting of the Eston Nab scheduled monument will be the most affected as the monument proffers views of the whole development but, considering the surrounding industrialisation of the landscape that has already happened within the monument's setting to the north of the site, it is not considered that the development would detrimentally affect its significance any further. Consequently, Historic England has no objection to the proposal and does not wish to make any further representations. [RR-004]'

4.12.9. At Deadline 2, the Applicant submitted a SoCG with HE, which reflected the statements above and indicated agreement on all matters [REP2-042]. Whilst a signed version of the SoCG with HE was not submitted to the Examination, I consider that HE's position is clearly stated in [RR-004] .

4.12.10. IPs were consulted on the proposed change to the height of the turbine halls and HRSG buildings during the course of the Examination. HE responded by letter dated 9 May 2018 to the effect that HE had no further comments to make, but recommended that the Applicant involve the Conservation Officer at RCBC to advise on local issues and priorities, design, mitigation and opportunities for securing wider heritage benefits [REP3-010].

4.12.11. RCBC has given consideration to possible impacts on heritage assets as part of the LIR and in the final signed SoCG agreed with the Applicant. The Council's conservation officer has advised both at the outset and following submission of the revised details that there are no objections to the Proposed Development with regard to impact on heritage assets. RCBC continues to be of the view that the most prominent views will be from Eston Nab, and that this view also gives a clear view of the extent of industry, not just that relating to Wilton but to the wider Teeside area including in Middlesbrough itself and to the north, beyond the River Tees. The overall conclusion of RCBC is that the redevelopment of the brownfield site is not considered to result in any harm to the setting of

heritage assets. The SoCG records RCBC's agreement that the cultural heritage impacts of the Proposed Development are acceptable [REP4-009].

ExA conclusion

4.12.12. I conclude that the Proposed Development as provided for in the Recommended DCO represents good design in historic built environment terms. There will be no policy non-compliant adverse impacts on offsite historic built environment assets or their settings. The Proposed Development meets the requirements of relevant NPS policy identified above.

4.13. LANDSCAPE AND VISUAL ISSUES

Policy considerations

4.13.1. Policies relevant to landscape and visual impacts are set out in NPS EN-1, EN-2 and EN-4 and RCBC Local Plan UDP policies SD1.

4.13.2. In relation to the proposed generating station development (in particular, the stacks), a degree of adverse landscape and visual impact is acknowledged to be unavoidable. Paragraph 5.9.8 of NPS EN-1 states that 'virtually all nationally significant energy infrastructure projects will have effects on the landscape'. This is amplified by paragraph 5.9.15 of NPS EN-1, which says:

'The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. 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'.

4.13.3. Paragraph 2.6.5 of EN-2 acknowledges that 'it is not possible to eliminate the visual impacts associated with a fossil fuel generating station'.

4.13.4. Special considerations apply to developments within nationally designated landscapes (NPS EN-1 at section 5.9). Though not within it, the application site is visible from the North York Moors National Park, particularly from Eston Nab, a prominent landmark and viewpoint to the south of the Application Site. NPS EN-1 at paragraph 5.9.12 makes clear that sensitive siting and design should avoid compromising the purposes of relevant designations. However, '[t]*he fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent'* (NPS EN-1 paragraph 5.9.13). Local landscape designations (set out within development plans) must be taken into account and harm should be mitigated where possible, but are not seen as justifying a reason for refusal, and the SoS must consider whether the project evidences good design (EN-1 paragraphs 5.9.14 - 17).

4.13.5. 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

associated studies as a means of assessing landscape impacts relevant to the proposed project. Applicants are expected to undertake detailed evaluations of visual impacts at relevant individual receptors and to prepare such design and landscape mitigation proposals as can reasonably be provided, having regard to the intrinsically large scale and impactful nature of energy generation infrastructure.

4.13.6. Amongst other things Policy SD1 of the LP states that developments will be permitted where it will not result in the unacceptable loss or significant adverse impact on important open spaces or environmental, built or heritage assets which are considered important to the quality of the local environment. Developments will be expected to respect or enhance the landscape, biodiversity, geological features, the historic environment and both designated and non-designated heritage assets that contribute positively to the site and the surrounding area.

The Applicant's case

4.13.7. Landscape and visual effects were assessed in ES Chapter 11 [APP-053, superseded by AS-013], supported by photomontages and wirelines in ES Annex K [APP-080]. The assessment methodology is described in ES Section 11.2. Potential effects during construction, operation and decommissioning have been considered. The assessment is described as conforming to the European Landscape Convention (ELC) and having been undertaken in accordance with GLVIA 3[15]. Major and moderate impacts are considered to be significant for the purposes of the Landscape and Visual Assessment (ES paragraph 11.21 [AS-013]).

4.13.8. The baseline assessment noted that the project site lies entirely within the former operational footprint of a power plant which has now been demolished. To its east lies the Teesside Ensus bioethanol plant which is Europe's largest wheat bio refinery. Open grazing land lies to the south of the site and to its north is brownfield industrial land. To the west lies the A1053 road and mature perimeter planting which acts as screening between the Wilton International site and the residential areas of Grangetown and Eston. This large area of mature planting is part of a 'Green Wedge' that is identified in and contributes to the Tees Valley Green Infrastructure Strategy 2008. A further Green Wedge lies between Wilton International Site and Kirkleatham. Both areas of mature planting provide effective screening of direct views to the existing industrial area.

4.13.9. To assist the assessment process, photomontages and wirelines were produced for 'key representative viewpoints' (specifically viewpoints 1, 4, 5, 6 and 10), illustrated in ES Annex K [APP-080]. It should be noted that the landscape and visual assessment adopted a stack height of 90m as a worst case scenario. The photomontages in Annex K illustrate the effects of 90 m stacks, though 75 metres is also indicated by '-75m'. The assumed heights for other tall structures considered for the assessment

[15] Guidelines for Landscape and Visual Impact Assessment (GLVIA), produced by the Landscape Institute and the Institute of Environmental Assessment and Management in 2013 (3rd edition).

are 44m for the heat recovery steam generators (to the top of the vents), 23 metres for the turbine halls and 25 metres for the cooling towers.

4.13.10. During construction of the Proposed Development, there would be a number of potential short term landscape and visual impacts as a result of construction machinery and activities on the site. Apart from the use of cranes for the erection of the taller structures, the majority of construction activity will be screened in residential views, though clear views of the whole site will be visible from Eston Nab. However these effects will be temporary and limited to the construction period itself.

4.13.11. The ES identifies the following key landscape and visual effects during the operational period:

- The presence of new structures in the landscape immediately west of the existing Ensus bioethanol plant, including a number of elements such as the main block, two stacks of up to 90 m each (as a worst case) and 25 m tall cooling tower blocks;
- Introduction of additional site lighting for operational safety;
- The presence and movement of additional vehicles within and around the operational area; and
- Potential visibility of plumes from the stacks and cooling towers at certain times of year.

4.13.12. ES paragraph 11.49 explains that the potential impacts during decommissioning of the Proposed Development would be short-term and similar to those during construction [AS-013].

4.13.13. The assessment of likely significant effects is reported in ES Tables 11.5 (landscape) and 11.6 (visual amenity) [AS-013]. A cumulative assessment is provided in Section 11.4.5 and Table 11.7 [AS-013], which considers other developments (primarily of an industrial nature) located within 5km of the Proposed Development.

4.13.14. From the majority of viewpoints, the effects were identified as not significant' in accordance with the assessment methodology set out in ES paragraph 11.21 [AS-013] . From these locations the bulk of the development (i.e. the lower parts) would either be wholly or partly screened, with only the stacks and highest parts of the buildings being visible, in the context of existing industrial plant and infrastructure. This is illustrated for example in VP 1 – View from Lazenby Allotments, which shows a wireline of the screened part of plant in red. For one location (VP4 – High Street, Lazenby) the effect was assessed as 'minor to moderate'. The accompanying commentary states that 'views to the site are restricted due to intervening residences. The two stacks are the only visible components .. and will be seen alongside other taller components within the industrial area.' The most open view of the Development would be from Eston Nab to the south. However it would be seen alongside the Ensus plant and in the context of the wider Teesside Industrial area. Accordingly the magnitude of change is assessed as small, and the significance of effect 'minor.'

4.13.15. The effect on Viewpoint 4 (view from High Street , Lazenby) was assessed as 'minor to moderate'. Effects of moderate and above are deemed to be significant in accordance with the assessment methodology. ES Table 11.6 explains that as there are other tall industrial components in the skyline, like the Ensus plant and pylons, the range of effect is more towards 'minor' [AS-013].

4.13.16. The assessment concludes that the baseline environment is already industrial with a number of infrastructural elements in the vicinity of the site. For this reason, the presence of the project will have only a localised effect on the landscape. The taller elements will be apparent within characteristic local views. This however will be visible along the existing Ensus plant, pylons and transmission lines and road networks and against the backdrop of a very large industrial area. The key impact would be from the heat recovery steam generator housings and the stacks. However, it is noted that the Proposed Development is located on the site of a similarly sized former power station (now demolished), which has been an integral part of views for many years.

4.13.17. Section 11.5 of ES Chapter 11 [AS-013] sets out proposed mitigation measures relevant to the potential landscape and visual impacts. These measures would be delivered in the detailed CEMP (secured through Requirement 13 of the Recommended DCO) and through a landscaping scheme (secured through Requirement 12 of the Recommended DCO), which would be implemented after the major construction works are completed.

The Examination

4.13.18. The LIR submitted by RCBC [REP2-065] at Deadline 3 concluded as follows:

- The Applicant's LVIA assessment has been undertaken with reference to the relevant guidance of the Landscape Institute and the Institute of Environmental Management and Assessment.
- The viewpoints analysed in the LVIA and associated photomontages and wirelines were agreed in consultation with the Applicant at the pre-application phase and are considered to give a true and representative illustration of the scheme.
- Consideration has been given to the location of the power station and the associated structures that make up the development. While the power station and associated structures are proposed within a heavily industrialised landscape at Wilton International, there will be views of them from residential properties at the north/north-east edge of Lazenby village, from Lackenby and Teesville to the west and the edge of Dormanstown to the north-east. Given the setting of the site, it is considered that while there will be a change to the visual appearance of the area, the development will form part of the existing industrial landscape.

4.13.19. These conclusions were endorsed in the SoCG between the Applicant and RCBC [REP4-009]. With regard to LVIA, it was agreed that *'residual effects range from not significant to minor to moderate and will reduce*

over time as the Proposed Development is within a large industrial area and adjacent to the Ensus Bioethanol Plant, together with a number of industrial elements to the north-west continuing clockwise round to the east of the site. It is therefore agreed that landscape and visual impacts associated with the proposed development are acceptable. It should be noted that electricity and gas connections already exist at the site.'

4.13.20. At Deadline 4, RCBC confirmed it's view that the Applicant's proposed changes were of a nature that may be considered non-material, and that it did not propose to update the LIR in consequence [REP4-012].

4.13.21. No other RR or IP raised any particular concerns about the potential landscape and visual impacts of the project.

4.13.22. In my FWQs, I asked the Applicant to explain how lateral deviation allowed for in the dDCO would impact on the LVIA assessment (FWQ1.3.12, PD-008]). The Applicant responded that, as is apparent from the photomontages, lateral movement of the stack and main structures by less than three stack widths would not change the visual impact in any material way [REP2-080]. Any changes in the arrangement of ancillary structures would change some of the configurations of buildings in views, while others might be obscured. However these would not be a material change and would not change the assessment conclusions.

4.13.23. I also explored how the impacts from operation of the first train together with construction of the second train (under Scenario 2, as described in paragraph 2.1.3 of this Report) had been assessed in the LVIA. The Applicant explained (in response to Q1.8.7 [PD-008]) that the LVIA had taken account of Scenario 1 as the worst case in respect to landscape and visual impacts, due to the larger scale of construction activity it would involve. The Applicant considered that whilst the overall duration of construction under Scenario 2 would be longer, the impacts would be less intense than under Scenario 1 [REP2-080]. The Applicant submitted at Deadline 2 an updated version of ES Table 3.2 [REP2-004], which provided further explanation as to which scenario was considered the worst case for each ES aspect chapter.

4.13.24. I noted some inconsistencies between the parameters of the assessment as presented in ES Chapter 11 [APP-051] and the dDCO as submitted with the DCO application [APP-005], which I explored through my FWQs. In FWQ1.8.19 [PD-008], the Applicant was asked to confirm that the photomontages and wirelines represented the worst case extent of development in ES Table 5.3 [APP-047] and Table 7.6 [APP-049] and reflect the dimensions set out in the dDCO. The Applicant confirmed that the photomontages were prepared based on the layout and dimensions (massing and height) of the key units comprising the tallest and largest structures, including a worst case stack height of 90m. Other smaller buildings were included as blocks for illustrative purposes to help represent the overall proposed development [REP2-080].

4.13.25. In [REP2-080], the Applicant acknowledged that the photomontages presented in ES Annex K [APP-080] were based on a slightly lower gas turbine building height (23m above existing ground level, compared to 25m as defined in Requirement 4 (2)(c) of the draft DCO). This meant that the photomontages do not fully reflect the maximum dimensions set out in the draft DCO or in theory, a worst case scenario for the height of this particular structure. However, the Applicant considered that this small change in the height of the turbine building did not change the significance ratings presented in the ES assessment. This is because the main impact is anticipated to be from the HRSG buildings and stacks. A small increase in height of the turbine building would not alter its visibility from any of the other viewpoints due to the nature of the site location and due to intervening mature vegetation, buildings and topography [REP2-080].

4.13.26. The Applicant also acknowledged that dDCO Requirement 4(2) (g) allowed for the potential of some 'other buildings and structures' being up to 20 m in height, which are not fully represented in the photomontages [REP2-080]. However, the Applicant considered that due to the nature of the site location and the manner in which it is currently screened by mature vegetation and other development, the other buildings would be concealed by vegetation and would not materially alter the assessment. The only viewpoint where the buildings would be perceptible would be Viewpoint 10 – Eston Nab where the project could appear to have more massing. However the Applicant noted that this is a relatively distant view and the main structures as assessed would dominate the effect [REP2-080].

4.13.27. During the course of the Examination, the Applicant proposed a change to the maximum height parameters of certain elements of the Proposed Development – specifically the turbine hall and HRSG buildings - as described in paragrpah 2.2.1 above.

4.13.28. Alongside the proposed change request, the Applicant submitted a revised version of Chapter 11 of the ES [AS-013] to take account of the proposed changes. This superseded the version of Chapter 11 provided with the DCO application documents [APP-053]. On the basis of the requested change and considering a worst case scenario, the potential maximum heights of the tallest structures considered for the assessment were confirmed in [AS-013] to be 75m for the stacks, 45 m for the heat recovery steam generators, 32 m for turbine halls and 25 m for the cooling towers. The most significant change proposed was the increase in height of the turbine halls, from 23 m to 32 m. The principal effect of the proposed change that the upper portion of the HRSG buildings and a small part of one gas turbine building would be visible above th trees and hedgerows (albeit against the backdrop of the larger HRSG building). Having regard to the proposed changes, the revised assessment [AS-013] concluded that there will be no change to the significance of effect from any viewpoint, or to the landscape character of the area.

4.13.29. The revised ES Chapter was accompanied by a revision to the photomontages at Annex K [AS-021]. The revised photomontages adopt

the lower stack height of 75 m, which reduces the prominence of these elements of the power plant. They show there would be an appreciable increase in the prominence of the turbine halls in Viewpoint 1. From Viewpoint 4, the HRSG buildings would appear somewhat more prominent than previously illustrated, above the ridge line of intervening residential development. The most apparent change would be from Viewpoint 5 – Rosedean Cattery, from where the increased bulk of the turbine halls would be apparent. However, I noted on the accompanied site visit that the viewpoint is slightly elevated above the adjoining footpath, and the view would not be fully appreciable from the footpath itself. In any event, it would be in the context of other industrial development and prominent overhead powerlines, and I do not consider that the predicted visual and landscape impacts would be materially diffferent as a result of the amended scheme.

4.13.30. An extensive programme of consultation was carried out, with most respondents considering that that the additional height of the HRSG buildings and the turbine halls would not result in materially different conclusions regarding the impacts of the development to those set out in the ES.

4.13.31. One respondent considered the effects could be significant and objected to the change on that basis [AS-027, Table 4.1, NMC-007]. However this was in the context of an in- principle objection to the Proposed Development, having regard to concerns over the environmental impacts of the previous power station in the site, now demolished. After careful consideration of the responses I made a procedural decision on 4 July 2018, confirming that the proposed change could be accepted for examination as part of the Proposed Development. The reasoning for this is set out in full in the procedural decision [PD-013]. In summary, I concluded that the requested changes are not of such significance as to amount to a form of development which is substantially different to that which was originally applied for. Given that the proposed changes have been advertised and placed on deposit, accepting them for examination as part of the proposed development would not result in prejudice to any interested party.

4.13.32. Though it did not consider the proposed changes to be material, the EA pointed out in its response to the ExA's consultation that air emissions monitoring platforms on the stacks have not been shown on the photomontages [REP3-012]. It is likely that these large monitoring platforms which would be required for compliance with an environmental permit would be located approximately half way up the stacks.

4.13.33. In my SWQs [Q2.4.1, PD-012], I asked the Applicant to confirm the size and placement of the platforms and explain how these elements have been taken into account in the ES Landscape and Visual Impact Assessment (LVIA) [AS-013]. The Applicant responded at Deadline 5 [REP5-005] that the air emissions monitoring platforms on the stack are shown on the photomontages [AS-021], as the rings near the top of the stacks, and have therefore been taken into account by the LVIA assessment. The Applicant stated that whilst the precise size and

placement of these platforms will be a matter for detailed design, it is expected that they will need to be placed approximately 40 m above the point at which the flue enters the stack and some 50 to 59 m above ground level. The platform may need to be wider, some 16 metres in diameter to allow deployment of 4 m long sampling probe, whereas the platforms shown in the photomontages are approximately 12 m. However they are illustrated as solid bands, whereas in practice they would be more open walkways with safety handrails around [REP5-005]. I am satisified that the platforms have been adequately considered as part of the LVIA.

4.13.34. The Applicant's assessment of cumulative landscape and visual effects (presented in ES Chapter 11 [Section 11.4.5, AS-013]) was based on other developments screened into the assessment at the point in time when the Scoping Report was produced. During the Examination, the Applicant noted [Q1.5.4, REP2-080] that one further development had since been approved which could have cumulative landscape and visual effects together with the Proposed Development (Ref. R/2017/0730/FFM -construction and operation of a plastic conversion facility at the Wilton International Site). However, the Applicant explained that this development would not be inter-visible with the Proposed Development and was not likely to result in significant cumulative landscape and visual effects [REP2-080].

4.13.35. The CEMP was amended during the course of the Examination to include mitigation measures proposed to address landscape and visual effects during construction [Table L4.10, REP7-002]. These details would be further developed in the detailed CEMP secured by Requirement 13 in the Recommended DCO.

ExAs Conclusion

4.13.36. The guidance in NPS EN-1 acknowledges that virtually all energy NSIPs will have landscape and visual impacts which cannot be fully mitigated. The aim in designing the project should be to minimise the harm to landscape and visual effects and provide reasonable mitigation. NPS EN-2 states that if a location for a fossil fuel generation project is appropriate and it has been designed sensitively to minimise harm to landscape and visual amenity then the visibility of the generating station should be given limited weight.

4.13.37. The site location is a brownfield site, which is set within Wilton International Site, a location where there are numerous existing large scale plants, and close to other major installations such as the Redcar Steel Works. The site was previously occupied by large scale generating station, now demolished. The site and surrounding area retain much of the distribution network associated with this use, in the form of transformers, pylons and overhead lines, themselves major landscape interventions. This is a significant benefit of the use of the site for energy generation, in that it does not require the construction of new above ground supply or distribution networks, but makes use of established infrastructure.

4.13.38. It should also be remembered that the Wilton International Site, within which the Application site lies, benefits from three (identical) instruments of consent granted by Redcar, Eston and Guisborough Borough Councils in 1946 (referred to collectively as the 'IOC'). The IOC effectively confers deemed planning consent for heavy and light industrial development. While the present DCO Application clearly requires consent under PA2008, this historic context is a consideration of some materiality to the consideration of the suitability of the site.

4.13.39. It is apparent from the ES and the information submitted by the Applicant accompanying the requested change that there will be some landscape and visual impacts that cannot be mitigated in full, particularly those arising from the stacks and HSRG buildings. Nevertheless I consider that, as demonstrated in the photomontages, there is established landscaping which will be retained and will serve to screen the visual and landscape impact of all but the tallest structures, thereby substantially mitigating the landscape and visual impact of the Proposed Development Development. Clearly the site cannot be screened from elevated viewpoints such as Eston Nab, but I am satisfied that it will be viewed in the context of existing major installations, with no more than minor impact on the landscape character of the area, and at worst a moderate impact in the views from sensitive residential locations.

4.13.40. I acknowledge that the Applicant has sought throughout to retain flexibility to reduce the stack height, and that this would be of benefit in reducing the visual and landscape impacts of the Proposed Development. However for the avoidance of doubt I consider that the impact of stacks at a height of 75 m would be acceptable in landscape and visual terms. I set out the reasons why I do not consider that it is appropriate to retain this level of flexibility in the DCO in Section 4.9 above and Chapter 5 below.

4.13.41. The Recommended DCO contains measures which allow the relevant planning authority (RCBC) to give further consideration to mitigation through detailed design, choice of materials, colour and finish which will help to assimilate the structures in the landscape as far as possible. In view of the suitability of the location for the Proposed Development, which would be viewed in the context of the wider Wilton International Site, I consider that limited weight should be attached to the unavoidable residual landscape and visual impacts of the scheme, including in views from the National Park, in accordance with the advice in paragraph 2.6.10 of NPS EN-2. With regard to views from the National Park I am satisfied that the Proposed Development would avoid compromising the purpose of designation. The balance between any remaining adverse impacts and any benefits of the Proposed Development is considered later in this Report.

4.13.42. I am satisfied that the Proposed Development would accord with all legislation and policy requirements and that landscape and visual matters are adequately provided for and secured in the Recommended DCO.

4.14. NOISE AND VIBRATION

Policy considerations

4.14.1. NPS EN-1 sets out the requirements for a noise assessment of energy related projects and outlines the approach that applicants should adopt for the preparation of noise assessments, in line with the Noise Policy Statement for England. Paragraph 5.11.9 of NPS EN-1 requires that, when determining the application, the Secretary of State should not grant development consent unless he is satisfied that the proposals will:

- 'Avoid significant adverse impacts on health and quality of life from noise;
- Mitigate and minimise other adverse impacts on health and quality of life from noise; and
- Where possible, contribute to improvements to health and quality of life through the effective management and control of noise.'

4.14.2. NPS EN-1 endorses the use of reference to BS4142 and BS8233.

The Applicant's case

4.14.3. Noise and vibration impacts are assessed in ES Chapter 8 [APP-050], supported by ES Annex F1 [Baseline Noise Levels, APP-071] and ES Annex F2 [Operational Noise Assumptions and Predictions, APP-072]. The assessment has modelled impacts during the construction and operational phase. Noise levels during decommissioning are assumed to be similar to/less than those during construction [para 8.111, APP-050].

4.14.4. Potential impacts to noise sensitive receptors (NSRs) arising from the Proposed Development were identified and assessed using noise modelling. Potential impacts include: noise from construction equipment, noise from off-site construction traffic during construction; operational noise from on-site equipment; and decommissioning. Effects were assessed for the two construction scenarios. The ES states that the noise assessment for the Project has been carried out on the basis of a realistic worst case scenario.

Baseline

4.14.5. Noise monitoring locations and representative NSRs were agreed with RCBC at a number of locations around the site [as illustrated on Figure 8.1 and listed in Table 8.4; APP-050]. Residential properties at Lazenby benefit from an existing 6 m high noise wall on the southern edge of the Project site, which will be retained as part of the project. The noise model simulated the existing wall as a highly absorptive barrier (I.e. with reflection loss > 11dB, and absorption coefficient α >0.91.

4.14.6. Representative night-time background sound levels arrived at by survey ranged from 37 dB(A) LA90, 15mins at Derwentwater Road, Grangetown to 45 dB(A) LA90,15mins at Yearby Village. A daytime noise survey was not undertaken, as agreed with RCBC [para 8.107, APP-050]. Noise levels were however available from a noise monitor in the village of Lazenby; these were typically below 65dB LAeq [para 8.37, APP-050]

and indicated daytime noise levels are typically 15-20dB higher than the middle of the night. The results of the baseline noise surveys are presented in ES Annex F1 [APP-071].

4.14.7. The future baseline is not anticipated to vary materially from the baseline noise levels presented in the ES [section 8.3.5, APP-050].

Noise effects during construction

4.14.8. During the construction phase, the potential noise effects are from on-site construction plant noise and off-site construction traffic. Construction noise levels at sensitive properties near the site have been predicted using the methodology in BS 5228, and include the effect of the existing noise barrier which is to be retained.

4.14.9. Construction noise has been predicted based on an understanding of other similar projects, assuming an even spread of construction activity around the project site.

4.14.10. Given that the site is over 450m from the nearest Noise Sensitive Receptors (NSRs) in Lazenby the Applicant considers that it would be unlikely that noise levels from any construction plant would exceed daytime noise limits. Noise levels have been estimated based on a worst case plant assemblage with a sound power that reflects the likely noise levels based on a combination of equipment.

4.14.11. Predicted construction noise levels at one metre from the facades of the receptors for the noisiest phase of general construction are presented in Table 8.9 of the ES [APP-050] and range from 53 dB LAeq at both NSRs in Grangetown, 55 dB LAeq at the closest dwellings to the project site at Lazenby to 41 dB LAeq at Dormanstown. RCBC has confirmed it is in agreement that the predicted noise levels in ES Table 8.9 are reasonable [Q1.9.9, REP2-081].

4.14.12. The results indicate that the predicted construction noise levels at all NSRs would be below the BS 5228 criterion of 65 dB LAeq and therefore no significant effects are expected as a result of on-site construction activities.

4.14.13. With regard to off-site construction traffic, the worst case is represented by both trains being constructed simultaneously. The modelling predicts an increase in noise levels of less than 1 dB(A) on any road link which is used by construction traffic. Since this is below the significance criterion of 3 dB(A) no significant effects are predicted.

4.14.14. Construction vibration has been scoped out of the assessment on the basis that any piling would be undertaken over 500m from the nearest sensitive receptors, and empirical studies suggest that vibration at distances greater than approximately 100 m are unlikely to result in significant effects [APP-050]. It is also noted that any piling would be completed using rotary techniques rather than driven, reducing the potential for vibration [APP-050]. The Scoping Opinion [APP-063]

confirmed that impacts from construction vibration could be scoped out of the ES.

Operational noise effects

4.14.15. The data for the assessment of operational noise is based on noise modelling supplied by equipment suppliers reflecting the use of Best Available Techniques (BAT) in terms of equipment design and noise mitigation. The effects during operation are expected to be limited to noise from operational equipment deployed. A worst case in terms of operational noise is that both generation trains are operating (as per Scenario 1).

4.14.16. Operational noise countours for both scenarios are presented in Annex F2 to the ES [APP-072]. Figure F2.2 shows the noise contours for predicted operational noise levels around the Proposed Development site assuming both trains in normal operation, representing the worst case scenario. The results for NSRs range from a maximum of 40 dB LAeq, 15 minutes at Grangetown and Lazenby to 28 dB LAeq, 15 minutes at Dormanstown and Yearby village. RCBC has confirmed it is in agreement that the predicted operational noise levels in ES Tables 8.10 and 8.11 are reasonable [Q1.9.9, REP2-081].

4.14.17. The Applicant agreed with RCBC that night-time baseline data should be used in the assessment as representative of the most sensitive time of operation. ES Table 8.11 [APP-050] presents the initial estimate of noise impacts at night. The Applicant considers the assessment to be conservative as the noise model assumes receptors are downwind, but the NSRs are located upwind [para 8.99, APP-050].

4.14.18. The only locations where the predicted rating level would exceed the representative background sound level are the two NSRs at Grangetown (NSR 1 at Derwentwater Road and NSR 1a at Shakespeare Avenue), where an increase of 3 dB(A) over the background level is anticipated but which is below the level where a significant adverse effect is expected. It was agreed with RCBC that there is no requirement to apply an acoustic feature correction as this can be avoided during the detailed design and commissioning phases of the Proposed Development.

4.14.19. The predicted noise resulting from the operational Proposed Development meets the lower end of the range of criteria employed to avoid sleep disturbance (i.e. 40 to 45 dB(A) from BS 8223). The noise resulting from the project is unlikely to result in sleep disturbance although some noise may be audible outside of the domestic properties. The ES concludes that as it is reasonable to assume that most people are inside their buildings at night, the impacts of operational noise are not considered to be significant at any residential location.

4.14.20. Daytime background noise levels have not been collected. However it is reasonable to assume that daytime levels will be higher than night-time levels, consistent with data from the Lazenby continuous monitoring station. These indicate that daytime noise levels are typically 15 to 20 dB

higher than those in the middle of the night. Significant effects resulting from daytime noise impacts are not predicted.

4.14.21. With minimal operational traffic movements anticipated, noise from traffic during operation was scoped out of the noise assessment, as agreed in the Scoping Opinion [APP-063]. Since the site can be accessed by major roads which already serve the Wilton International Site, major changes in traffic noise are unlikely. This is supported by a review of traffic prediction data (provided in ES Chapter 10 [APP-052]), whichconcludes that changes in total trafficwould be negligible.

4.14.22. Vibration from operational equipment is not expected to result in impacts that are perceptible beyond the project site boundary and as such, this matter has been scoped out of the ES [APP-050]. I am content that this is a reasonable assumption considering the distance to sensitive receptors. Vibration from traffic movements was not assessed in the ES, on the basis that reference to the Design Manual for Roads and Bridges (DMRB) criteria indicated that any impacts would not result in LSE.

Decommissioning

4.14.23. A detailed assessment of noise impacts during decomissioning of the Proposed Development has not been undertaken, however ES paragraph 8.111 concludes noise levels would be similar to/less than those during construction (i.e. not significant).

The Examination

4.14.24. During the course of the Examination [FWQ 1.9.2, PD-008] the Applicant was asked to provide evidence that survey data to establish baseline noise conditions was agreed with RCBC. In response, the Applicant submitted an email from Mike Gent of RCBC dated 28 March 2017 confirming agreement [REP2-073]. This was consistent with RCBC's response to FWQ1.9.2; provided in [REP2-054].

4.14.25. RCBC was asked to explain why it considered that anything above a 3 dB(A) increase in background noise levels would be unacceptable (Q1.9.4, PD-008). In response, RCBC stated that the level was set to prevent a creeping background and to offer a level of protection for nearby residential receptors [REP2-054]. The Applicant commented that the noise assessment has been based on recognised national guidance rather than the up to 3 dB change that RCBC has requested, which is not referenced in formal guidance[16]. Although it is not unusual for such local guidelines to be adopted where noise levels from large industrial areas are already high and a council is trying to avoid 'creeping background' as a result of gradual intensification of the use of a site, the Applicant noted that the background noise at Wilton has reduced over recent years due to plant closures, and therefore the reductions will off-set any increase in ambient noise as a result of the development [REP2-080].

[16] BS4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound BSI 2014

4.14.26. The predicted operational noise levels from the Proposed Development are low, as shown in Table 8.11 of the ES [APP-050], and are 3 dB above the representative baseline levels. When noise from the project and the baseline are combined, noise increases could be approximately 5 dB(A). However, as noted in ES paragraph 8.103 [APP-050], this situation is actually based on wind directions that cannot occur at the same time, which have been adopted to construct a robust worst-case assessment. Under more realistic conditions the project is likely to result in noise changes that are close to the 3 dB guidance proposed by RCBC.

4.14.27. In Question 1.9.14 [PD-008], the Applicant was asked to explain why it would not be possible or appropriate to use the operation of the first train as the future baseline and then assess construction noise impacts of the second train. The Applicant responded [REP2-080] that while it would be possible to assess the construction impacts against the background noise from the first train, this would be less conservative and would assume that the noise from the operation of the first train would have formed the new baseline. The Applicant stated that it is more usual to consider baseline to reflect the situation which is established over a longer period, to avoid RCBCs expressed concern over creeping baselines [REP2-080].

4.14.28. The Applicant was asked to update the dDCO to include specific reference to how proposed mitigation would be secured during construction and operation [Q1.9.10, PD-008]. In response, the Applicant updated the draft CEMP (Requirement 13 of the draft DCO) to reflect the guidance on mitigation measures set out in BS 8225 [version 2, REP2-008]. The Applicant also submitted an updated verson of Table 17.1 ('Mitigation Summary Table') [REP2-005], including reference to how mitigation relevant to both the construction and operational phases was secured through specific dDCO requirements. This superseded Table 17.1 in [APP-059].

4.14.29. The Proposed Development includes the retention of existing 6m noise wall/barrier along the southern boundary of the application site, as well as the construction of a 6m new wall/barrier along the western boundary (secured through dDCO Requirement 19 [REP8-009]). The Applicant has clarified [in response to FWQ 1.3.38, REP2-080], that the references in the dDCO to the western boundary wall needing to be 'rebuilt' are due to this structure having previously been present on the site, but having been removed during demolition of the former Teesside Power Station. The Applicant confirmed in response to my FWQs 1.9.6 and 1.9.8 [PD-008] that both the existing and proposed acoustic walls had been included in the noise modelling [REP2-080].

4.14.30. Within the LIR [REP2-065], RCBC requested verification of the efficiency of the existing and proposed acoustic walls and the acoustic model. This was discussed at the ISH on the DCO[17] and RCBC subsequently confirmed [REP4-012] that dDCO Requirement 19 ('Control of noise during operational phase') suitably addresses this request. More broadly, Requirement 19 of the final dDCO [REP8-009] secures a written

[17] Held on14 June 2018

programme for the monitoring and control of operational noise to be submitted to and approved by RCBC (in consultation with the EA).

4.14.31. I had some concerns about how the Applicant would ensure compliance with suitable construction noise limits, which in response to my FWQ 1.9.19, the Applicant confirmed [REP2-080] were based on criteria within BS5228 and would apply *"as far as reasonably practicable"*. In my SWQs (Q2.6.1), I asked the Applicant to confirm what noise monitoring would be undertaken during construction to ensure that the threshold levels within BS5228 (as set out in Table 8.3 of the ES [APP-050]) would not be exceeded. In response, the Applicant confirmed [REP5-005] that details on noise monitoring would be developed in the detailed CEMP – following appointment of an Engineering, Procurement and Construction (EPC) contractor – under the provisions of Requirement 13 of the dDCO. The Applicant explained in response to Q2.6.1 [REP5-005] that at this stage, a construction noise monitoring programme is envisaged to be made up of two types of monitoring, broadly described as follows:

- Monitoring to demonstrate that noise from construction activity during normal working hours is within the BS5228 threshold levels; and
- Monitoring to demonstrate that noise from construction activity outside of normal working hours is within the BS5228 threshold levels or whatever other levels may have been agreed with an RCBC officer.

4.14.32. At Deadline 5, the Applicant also updated Requirement 13(2)(a)(ii) of the dDCO [version5, REP5-001] to refer specifically to compliance with BS5228.

4.14.33. Subsequent to this, in my Rule 17 request for further information dated 5 September 2018 [PD-014], I requested the Applicant to make further amendments to dDCO Requirement 13(2)(a)(ii) and the draft CEMP to include reference to two specific types of construction noise monitoring detailed in the Applicant's response to Q2.6.1 [REP5-005], and set out in paragraph 4.13.33 above.

4.14.34. In response, the Applicant submitted an updated draft CEMP [version 5, REP7-002] and dDCO [Version 6, REP7-005]) for Deadline 7 of the Examination. Table L4.4 of the draft CEMP [REP7-002] now contains the details of the noise monitoring [as provided in Q2.6.1, REP5-005].

4.14.35. In addition, Requirement 13(2)(a)(ii) of the dDCO [REP7-005] was updated to include reference to construction noise monitoring in accordance with BS5228 threshold levels. The dDCO was updated again at Deadline 8 [version 7, REP8-009] but with the wording of Requirement 13(2)(a)(ii) remaining as per version 6 [REP7-005].

ExA conclusions

4.14.36. Having regard to the location of the Proposed Development and the extent of the likely impacts, I am satisfied that sufficient measures have been proposed and secured through Requirements 13 and 19 of the Recommended DCO and Table L4.4 of the CEMP [REP7-002] to ensure that any impacts to sensitive receptors from all phases of the Proposed

Development can be mitigated to acceptable levels. Taking account of these mitigation measures, the ES concludes that significant effects as a result of noise and vibration are not likely to occur. I consider that the requirements of NPS EN-1 in respect of noise and vibration are complied with.

4.15. TRANSPORTATION AND TRAFFIC

Policy considerations

4.15.1. NPS EN-1 states that the consideration and mitigation of transport impacts is an essential part of the Government's wider policy objectives for sustainable development. The Applicant has produced a Transport Assessment (TA) in accordance with the guidance [APP-077].

The Applicant's case

4.15.2. Traffic and Transport Effects are assessed in ES Chapter 10 [APP-052] Scenario 1 (both power trains constructed in one phase) is considered to represent the worst case. It is expected that there will be up to 945 staff involved in the construction phase. Most will travel to the site in cars or vans, with a predicted occupancy of 2.5 staff per vehicle, based on experience and agreed with Highways England (HE), resulting in a peak of some 340 construction trips per day. All staff would use the existing site entrance from the A1053 Greystone Road.

4.15.3. The ES predicts up to 68 HGVs per day at the peak of the construction phase. These will be scheduled to take place outside of the peak periods on the local and strategic highway network. The transport of abnormal indivisible loads (AILs) it is likely that components for the CCGTs will be manufactured abroad and shipped directly to the east coast, the most likely destination being Teesport, and thence to the site via the A66 and A1053. It is predicted that there will be 70 AILs during the construction phase. A draft construction travel management plan (CTMP) has been produced which addresses demand management measures to mitigate impacts from construction traffic.

4.15.4. The greatest potential effects during construction are predicted to occur on the A1053 Greystone Road, with the northbound traffic flow increasing by 7% and HGVs by 15.6%. The southbound flow is predicted to increase by 3% and HGVs increasing by 17%. All of the links have increases below the 30% threshold quoted for HGVs and below 10% threshold quoted for traffic flows within the Institute of Environmental Assessment (IEA) Guidelines.

4.15.5. Construction is expected to last for 39 months. Numbers of HGVs and construction workers will vary, with the peak expected to occur around month 20. Construction staff would work 12 hour shifts from 0700 – 1900 hours, and thus construction worker trips would for the most part take place outside peak hours on the network. ES Table 10.11[REP-052] demonstrates that averaged across the day, the Project will have a negligible impact in terms of construction traffic and therefore will result in no significant effects. A CTMP secured through Requirement 15 sets

out measures for management of traffic impacts including parking arrangements, working hours, wheel washing and dust control. For the movement of AILs application will be made to HE as required, and any temporary restrictions on road use will be publicised in advance.

4.15.6. During the operational phase there will be 48 staff on site. A travel plan is not considered necessary for the operational phase due to the low number of operational trips. Operational staff are predicted to work 12 hour shifts. It is predicted that none will arrive during the AM peak but that some may depart during the PM peak, amounting to some 31 departures. Averaged across the day the impact of operational traffic will be negligible.

The Examination

4.15.7. No significant concerns about the Applicant's assessment of traffic impacts were raised by any IP during the examination. In FWQs I asked the Applicant to clarify terminology used in the dDCO (Q1.3.34) to which the Applicant responded [REP2-080] by producing and updated dDCO addressing the issues raised. These changes were non-controversial. An SoCG between the Applicant and Highways England was submitted but as this was not signed, I have not given it weight in reaching my conclusions.

ExA Conclusion

4.15.8. The roads affected are part of the strategic road networks and designed to carry large volumes of traffic and HGVs. On the basis of the assessments in the ES and TA, which have not been challenged, I am satisfied that the impacts of construction and operational traffic will be negligible.

4.16. WATER FRAMEWORK DIRECTIVE

The Examination

4.16.1. The development has the potential to affect two WFD waterbodies: Tees Estuary (S Bank) and Tees Estuary. In its WR at Deadline 2, the EA sought further information from the Applicant to demonstrate compliance with the Water Framework Directive. In response to FWQ1.12.2 [REP2-079] the EA stated that the Applicant would need to demonstrate:

- Whether the proposed development will lead to a deterioration of any WFD waterbody;
- Whether the proposed development will compromise the achievement of Good Status in any WFD waterbody;
- Whether the proposed development will contribute towards a cumulative deterioration of WFD or prevent enhancement; and
- Whether the Proposed Development will support the delivery of measures identified in the Northumbrian River Basin Management Plan.

4.16.2. The EA indicated that it would welcome contributions by the Applicant to assist with the work of developing a Tees Estuary Strategic habitat

enhancement framework being prepared by the Tees Estuary Partnership.

The Applicant's response

4.16.3. In commenting on the EA's requests for information, the Applicant stated the pollutant linkage from the activities of the Project during construction and operation to the WFD water bodies more than 3 km away are considered to be very low in terms of flows from the site to the waterbody either overland or via a connecting watercourse.

4.16.4. The discharge of water from the site will be via the Wilton International Site surface water drainage system, which collects surface water run-off and effluent from all businesses on the site and ultimately discharges to the Tees Estuary via the Dabholm Gut. This discharge is monitored on site and operated under an existing environmental permit.

4.16.5. Since the project will only discharge aqueous effluents to a WFD waterbody via an existing licensed discharge that is subject to effluent quality and monitoring conditions, the Applicant considers it reasonable to conclude that it will not lead to any deterioration in the status of the waterbodies or compromise the achievement of Good Status of that waterbody, nor contribute to a cumulative deterioration of WFD status. In this context there are no specific measures for the project to adopt in regard to those identified in the Northumbrian River Basin Management Plan. The Applicant has not considered biodiversity and net gain approaches in a WFD context. Rather the Applicant has agreed to provide support for the initiative of the Tees Valley Wildlife Trust. The Applicant considers that the measures proposed would enhance the existing biodiversity resource and increase its value. They are not measures aimed at mitigating effects n ecology but should be viewed as a net gain [REP3-002].

4.16.6. In response to SWQ2.5.1, the EA commented that both the Tees Estuary and Dabholme Gut are designated as physically heavily modified waterbodies. The EA confirmed the view that the proposed development will have no significant adverse impact upon WFD waterbodies. It acknowledged that it seems highly unlikely that it will be possible to implement mitigation measures to remediate the watercourses within the proposed site and further that the existing modifications are not significant in the context of the waterbody. The EA identified opportunities for the Applicant to contribute to off-site , for example enhancement of ecological connectivity between Dabholme Gut and Coatham Marsh Nature Reserve.

4.16.7. The final signed version of the SOCG between the EA and the Applicant at Deadline 7 [AS-003] confirms agreement that the Proposed Development would have no significant adverse impact upon WFD water bodies. There is therefore no obligation on the Applicant under the WFD to provide specific mitigation measures in respect of relevant water bodies. Notwithstanding this, the Applicant is already voluntarily participating in water course clean up initiatives, including the River Tees Clean Up Initiative, cooperation with the Industry Nature Conservation

Association (INCA) on biodiversity enhancement of land owned by the Applicant at Wilton, including water bodies. It is agreed that this demonstrates that the Applicant is pursuing and partaking in practicable opportunities to enhance and improve a WFD water body, and that WFD matters have been satisfied for the purposes of the DCO application.

ExA Conclusion

4.16.8. In light of the information provided in the ES and during the Examination and the signed SoCG with the EA [AS-003], I conclude that that there would be no deterioration of waterbodies I am content that the Proposed Development would meet the requirements of the WFD and subsequent legislation to protect waterbodies. Paragraph 5.15.6 of NPS EN-1 is complied with.

4.17. COMBINED HEAT AND POWER READINESS

Policy

4.17.1. Paragraph 4.6.6 of NPS EN-1 states that any application to develop a thermal generating station must either include Combined Heat and Power (CHP) Readiness or contain evidence that the possibilities for CHP have been fully explored to inform the SoS's consideration of the application 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.

The Applicant's case

4.17.2. The application was accompanied by a CHP Assessment [APP-038], which undertakes an assessment of potential heat users, a heat export feasibility study and as assessment of BAT.

4.17.3. The Assessment reports that Tees CCPP will be located to the immediate south of the Wilton International Site, a 2000 acre site which is home to a wide variety of energy intensive manufacturing (such as chemical, petrochemical, biofuel, polymer and recycling) that use heat and power in the process. The Wilton site has extensive utilities infrastructure and established CHP generation equipment comprised of efficient gas and steam turbines integrated with biomass and Energy from Waste assets. The Application site was also formerly the site of Teesside Power Station (TPS). TPS was an 1875MW CCGT facility with capability to supply heat and power into the Wilton International site utilities, supplying supplementary steam and power to Wilton for many years prior to decommissioning. Much of the electrical infrastructure for supplying power to the Wilton site remains in place and will be reused by the Application plant. Steam and water utilities and pipeline/service corridors also remain available for reuse.

4.17.4. Tables 3.2 and 3.3 of the Assessment show that the capacity of the Applicant's existing heat producing assets substantially exceed the current demand for heat by other uses on the Wilton site, and this was confirmed at the ISH. Demand can be extremely variable due to

customer process requirements where the total heat load is made up of four different grades of steam. However, Sembcorp is actively marketing the Wilton site to attract other companies to set up there. There is also a proposed South Tees District Heating scheme serving areas covered by Redcar and Cleveland and Middlesbrough Councils. This scheme is at an early stage and is currently completing its feasibility assessment The Applicant has expressed an interest in supporting the scheme.

4.17.5. With regard to the BAT Assessment, it is acknowledged that there are currently no immediate opportunities for supplying heat, but anticipated that growth of business in the medium to long term will require new steam raising capacity. Modifications to the proposed new power plant will be minimal to allow for steam offtake. While new steam pipelines may be required there is an existing steam pipeline in place, though this is of high capacity appropriate for when demand at the Wilton international site was much higher. It is expected that the most likely grade of steam needed by a new customer would be intermediate steam, which could use the existing pipeline. The Applicant is committed to carrying out periodic reviews of opportunities for the supply of heat (both existing and new).

The Examination

4.17.6. In my First Written Questions [PD-008], I asked the Applicant to provide evidence that existing connections to utilities as shown in Figure 1 of the CHP Assessment [APP-038] would be adequate to provide CHP to the Wilton International site or other sites, and also to provide further information in relation to the feasibility of exploiting regional heat markets and how the UK heat mapping exercise had been taken into account. I also asked the EA to confirm whether or not the three BAT tests had been adequately addressed.

4.17.7. The EA responded that '*the Tees Valley City Deal, proposed by Tees Valley Unlimited, describes the South Tees District Heating scheme as taking heat from Wilton International to supply homes, local authority buildings and a large hospital . An active, central involvement in this scheme would satisfy our requirement for the applicant to consider potential economic opportunities to supply heat to a wide search radius*' [REP2-032].

4.17.8. At the ISH on Environmental Matters the Applicant confirmed that they are trying to attract energy intensive users onto the Wilton International site and that Sembcorp is centrally involved in the South Tees District Heating project.

Applicant's Response

4.17.9. The signed SoCG between the Applicant and the EA submitted at Deadline 7 [AS-003] recorded agreement that sufficient information has been provided by the Applicant to satisfy requirements relating to CHP, including adequately demonstrating the CHP readiness of the proposal. Furthermore it is agreed that Requirement 21 'Combined heat and power' of the draft DCO [REP4-008] adequately secures space and routes for the

provision of CHP over the lifetime of the proposed development (should CHP become viable in future).

ExA's conclusion

4.17.10. Having regard to the SoCG referred to above I am content that the Applicant has responded appropriately to the guidance in NPS EN-1. Requirement 21 'Combined heat and power' requires viability testing for CHP delivery to be carried out and adequately secures space and routes for the provision of CHP over the lifetime of the proposed development (should CHP become viable in future).

4.18. CARBON CAPTURE AND STORAGE

Policy

4.18.1. Paragraph 4.7.10 of NPS EN-1 states that all applications for new combustion plant which are of a generating capacity at or over 300 MW 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.

The Applicant's case

4.18.2. The Applicant submitted a Carbon Capture Readiness Statement with the ES (APP-039) and an updated Statement at Deadline 2 [REP2-091], which includes an assessment of possible land requirements, the technical feasibility of retrofitting CCR equipment, identifies a suitable area offshore for the storage of captured CO_2, assesses the feasibility of transporting the captured CO_2 to the storage facility, and makes an assessment of economic feasibility in accordance with the DECC Guidance. It indicates that Teesside has a well-publicised and documented plan for a 15 million tonne per annum CCS network proposed by the Tees Valley Combined Authority (TVCA) and supported by Teesside Collective (a cluster of multinational companies which includes the Applicant). The Wilton International site is considered to be well placed to connect with any of the proposed variants of the CCS network, with a number of existing key pipeline corridors.

The Examination

4.18.3. Paragraph 4.21 of the ES CCR Statement [APP-039] indicates that an 8 hectare site for CCR would be required based on International Energy Agency estimates. Paragraph 4.22 goes on to estimate that based on other studies the requirement may only be 4.6 hectares. The area available for CCR at the application site is 5.4 hectares. In my first written questions I asked the Applicant and the EA to provide assurance that this area would be adequate for CCR. In response the EA stated that it could not comment on a footprint of 5.4 ha without additional evidence that the CCP will fit into the space allocated [REP2-032 and REP2-058]. At the ISH on Environmental Matters the Applicant confirmed their intention to commission a report to review the carbon capture proposals in the light of the EA's comments and produce a corresponding

plant layout. It was also stated that, while the Applicant remained confident that the CCR requirement could be accommodated within the project site, there is significant additional land within SCU's control which could be provided if necessary – using a section 106 agreement to secure any land outside of the order limits.

Applicant's response

4.18.4. In response to the EAs concerns about the adequacy of information set out in the CCR statement [APP-039], the Applicant submitted further information during the course of the examination. The further information is set out in the following documents:

- Tees Carbon Capture Sizing Studies –Support to Carbon Capture Readiness Assessment Sembcorp Utilities (UK) Limited produced by AECOM Infrastructure and Environment UK Limited dated 18 June 2018 [REP7-011].
- Assessment of CCR Compliance of the Tees Combined Cycle Power Plant project Report produced by J.G.Yao, P.S. Fennell FIChemE, N MacDowell FIChemE, Imperial College Consultants [REP7-007]
- AECOM memo dated 19 September 2018, headed Tees CCPP Project – response to EA letter dated 13 September 2018 Regarding Carbon Capture Readiness [REP7-015].

4.18.5. In its response at Deadline 7 [REP7-006], the EA commented as follows:

'*The submitted AECOM memo now provides the outstanding information which we previously requested in our letter of 13 September 2018.*

We consider that the applicant has now demonstrated that 'there are no foreseeable barriers' to the technical feasibility of CCP retrofit for a 1,520MWe combined cycle gas turbine power plant (CCGT). There is sufficient space for the proposed carbon capture plant based on the proposed 5.7HA of land set aside for the 1,520 MWe CCGT power plant using class H gas turbines.

The Carbon Capture Readiness Statement submitted as part of the DCO application and the subsequent recent submissions set out in this letter address all of the technical verification of CCS readiness … in Annex C of the DECC (2009) guidance, for a 1,520MWe power output plant.

The applicant has, however, NOT provided sufficient information to demonstrate that it is technically feasible and that there is sufficient space to retrofit a carbon capture plant with a maximum capacity of 1,700MWe. We therefore recommend that the DCO contains a requirement to limit the proposed power output capacity to 1,520MWe until it can be demonstrated that a maximum capacity of 1,700 MWe is feasible, as proposed by the Applicant in the AECOM memo dated 19 September 2018.'

4.18.6. On the basis of the further information supplied by the Applicant the SoCG between the Applicant and the EA [AS-003] records agreement that:

- the Applicant has provided sufficient information to address the Annex C checklist in Carbon Capture Readiness (CCR) produced by DECC in 2009, for a power plant with an output of up to 1,520 MWe;
- there are no foreseeable barriers to the technical feasibility of CCR plane retrofit for a 1,520 MW power plant;
- the Applicant will need to provide further evidence to demonstrate the feasibility of a power plant with a maximum capacity of 1,700 MW.

4.18.7. To secure this matter in the DCO, the Applicant and the EA agreed that the following new Requirement should be added to the DCO:

1) *The authorised development must not be operated to generate a net electrical output of more than 1520MWe unless and until sub-paragraph (2) has been satisfied.*
2) *The authorised development must not be operated at a net electrical output of more than 1520MWe and up to 1700MWe until the undertaker submits a scheme to demonstrate that it is technically feasible and there is sufficient space within the order limits to comply with the land footprint requirement for the fitting of retrofitting of appropriate capture equipment for a generating station with a net electrical output of up to 1700 MWe. The scheme shall be submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency. The scheme shall include as a minimum:*

    a. *Information required by the form 'Environment Agency verification of CCS Readiness New Natural Gas Combined Cycle Power Station Using Post-Combustion Solvent Scrubbing' as outlined in Annex C of the DECC Guidance for a generating station with a net electrical output of more than 1520MWe and up to 1700MWe; and*
    b. *Details demonstrating how the capture equipment will fit into the space allocated for the plant including the submission of engineering design details.*

4.18.8. On this basis it was agreed between the parties that CCR has been sufficiently dealt with for the purposes of the DCO application for a power plant with an output of up to 1,520 MWe. I consider this further in Chapter 8 (Draft Development Consent Order and Related Matters).

ExA conclusion

4.18.9. In the revised dDCO (Version 6) submitted at Deadline 7 [REP7-005], the Applicant included a new Requirement 29 headed 'Electrical output limitation'. This is substantially the same the wording agreed in the SoCG. However the Applicant submitted an amended draft DCO at Deadline 8 (Version 7) in which the words 'and up to 1700MWe have been deleted from Clause 1. I do not consider that this omission substantively alters the meaning of the Requirement, as it is a duplicate of what is included later in the clause i.e. 'up to 1700MWe'. If the Secretary of State decides to approve the DCO, I recommend that the Version of Requirement 29 is that included in the draft DCO Version 7 [REP8-005].

4.18.10. I understand that the Appellant considers that a lesser land take for CCR may be achievable in future due to improvements in technology which may allow for a revision to the guidance. However the evidence submitted by the Applicant to date in the context of current guidance demonstrates that the plant should be limited to an electrical output of 1,520 MWe until such time as it can be demonstrated that the CCR plant for the full 1700MWe can be accommodated within the DCO boundary.

4.19. OTHER MATTERS

4.19.1. A number of other matters were identified as part of the IAPI in the Rule 6 letter [PD-005, Appendix B].

4.19.2. With regard to Risk and Hazard Management, the Wilton International site is a complex site with a number of major industrial and processing installations and a network of supply and product delivery infrastructure. Chapter 15 of the ES assessed the risk for major accidents and hazards. The Proposed Development itself does not fall within the scope of the COMAH (Control of Major Accidents and Hazards Regulations 2015), as there will be no on-site storage of natural gas associated with the project. The natural gas pipeline and associated equipment are not defined as storage under the Regulations.

4.19.3. Paragraph 15.8 of the ES states that the Project Site is within the COMAH consultation distance of the adjacent ENSUS plant, with part of the site lying in area potentially affected by a major accident at the ENSUS facility. In response to FWQ1.10.11 [AS-080] the Applicant confirmed that the proposed plant layout takes into account the proximity of ENSUS, and that the areas where there would be the highest concentration of people lie on the western side of the plot, furthest away from ENSUS and shielded by the mass of the Turbine Halls and HRSG buildings. The previously demolished power station was operational when the ENSUS plant was constructed and was taken into account when the ENSOS safety case was written. The operators of the ENSUS plant have been consulted and did not raise any issues with the Proposed Development.

4.19.4. In paragraph 15.9 of the ES Chapter 5, it is confirmed that that the project will be designed and its implementation carried out in accordance with mandatory industry standards and codes which require infrastructure and systems to be designed so that risks to people and the environment are either eliminated or reduced to levels that are as low as reasonably practical.

4.19.5. No concerns were raised by any of the relevant statutory bodies or by IPs. I am satisfied that there are no issues of concern in respect of Risk and Hazard Management which would weigh against the Development Proposal.

4.19.6. Potential effects on the Water Environment are considered above in Section 4.16, where I conclude that there would be no deterioration of waterbodies and that Proposed Development would meet the

requirements of the WFD and subsequent legislation to protect waterbodies. The IAPI identified flood risk as a potential issue, but no concerns about potential for flooding were raised by any IP. Chapter 15 of the ES confirms that the whole of the Project Site is located in Flood Zone 1 and accordingly is at low risk from flooding. The project is therefore not considered to be at risk from fluvial flooding. The site is located 3.8 km from the Tees Estuary and over 5km from the North Sea coast. As the site is approximately 16m above ordnance datum, and outside of the Tidal Flooding Zone, the project site is not in an area deemed to be at risk from tidal flooding.

4.19.7. Accordingly I am satisfied that there are no issues relating to flood risk which weigh against the Development Proposal.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION, POLICY AND LEGISLATIVE CONTEXT

5.1.1. This chapter of the Report sets out my analysis, findings and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS), as the Competent Authority, in performing his duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive), as transposed in the UK through The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

5.1.2. 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 Business, Energy and Industrial Strategy is the competent authority for the purposes of the Habitats Directive and Habitats Regulations for energy applications submitted under the Planning Act 2008 (PA2008). Natural England (NE) is the statutory nature conservation body (SNCB).

5.1.3. I have been mindful throughout the Examination of the need to ensure that the SoS has sufficient information to enable him to carry out his duties as Competent Authority. In this regard I have reviewed and examined the evidence presented during the Examination concerning likely significant effects (LSE) on European sites[18] potentially affected by the Proposed Development both alone and in-combination with other plans or projects.

5.1.4. I prepared a Report on the Implications for European Sites (RIES) [PD-015] during the Examination, with support from the Planning 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 Deadline 6 of the Examination (22 August 2018)) in relation to potential effects on European sites. The RIES was published on the Planning Inspectorate's website on 5 September 2018, with IPs, including NE, being notified of this. Consultation on the

[18] The term European sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and candidate SACs, Special Protection Areas (SPAs), possible SACs, potential SPAs, Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above. For a full description of the designations to which the Habitats Regulations apply, and/ or are applied as a matter of Government policy, see PINS Advice Note 10.

RIES was undertaken between 5 September 2018 and 26 September 2016. This 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.

5.1.5. Comments on the RIES were received from the Applicant, NE and the Environment Agency; these comments have been taken into account in the drafting of this chapter. The RIES is not updated following consultation.

5.2. EUROPEAN SITES AND THEIR QUALIFYING FEATURES

5.2.1. 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 assessment.

5.2.2. The proposed Order limits of Tees CCPP do not overlap with any European site. The nearest European sites are approximately 2.8km to the north west of the application site.

5.2.3. The Applicant identified European sites which could be affected by air pollutants from the Proposed Development from within a 15km radius (described as an 'Area of Influence') from the Proposed Development, which was established using the air quality modelling data presented in ES Chapter 7 [APP-049; superseded by AS-020]. The Applicant stated [REP1-001] that a 15km radius represents a worst case for larger emitters, as defined by Department of Environment, Food and Rural Affairs (Defra)/EA guidance on air emissions risk assessment for environmental permits[19]. The SoCG between the Applicant and NE [REP2-009] records NE's agreement in respect to the 15km radius.

5.2.4. Accordingly the Applicant identified five European sites for inclusion within the HRA [REP1-001], as follows:

- Teesmouth and Cleveland Coast SPA;
- Teesmouth and Cleveland Coast pSPA;
- Teesmouth and Cleveland Coast Ramsar site;
- North York Moors SAC; and
- North York Moors SPA.

5.2.5. The locations of these European sites relative to the application site are illustrated on Figure H2.1 of the NSER [REP1-001]. Summary information in respect of these sites is provided in Table H2.1 of the HRA report and in the matrices in the RIES, including their approximate distances to the application site and their qualifying features.

[19] Department for Environment, Food & Rural Affairs and Environment Agency: Air emissions risk assessment for your environmental permit [on-line]. Available from: https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit

5.2.6. NE confirmed in its Relevant Representation (RR) [RR-007] the European sites which it considered relevant to the application; all of which were identified and considered by the Applicant in the NSER [REP1-001].

5.2.7. NE's RR [RR-007] also confirmed that at that time, the proposed extension to Teesmouth and Cleveland Coast SPA had no official status because it had not been formally consulted on. However, during the course of the examination and subsequent to making their RR (31 July 2018) NE commenced formal consultation[20] on extensions to both the Teesmouth and Cleveland Coast SPA (a potential SPA (pSPA)) and the Teesmouth and Cleveland Coast Ramsar site (proposed Ramsar site). UK Government policy requires that these sites are now given the same protection as if they were a designated habitat site.

5.2.8. Paragraph 2.1.8 of the RIES [PD-015] explains that the proposed Ramsar extension was not specifically referenced in the Applicant's NSER [REP1-001]. An additional qualifying feature (ruff) was also added to the pSPA; an assessment of potential impacts to which had not been provided in the NSER [REP1-001].

5.2.9. At the same time as publishing the RIES for consultation, I issued a Rule 17 request [PD-014] to the Applicant and NE, seeking comments in relation to:

- The implications for the HRA of the formal designation of the Teesmouth and Cleveland Coast as a pSPA and proposed Ramsar site during the Examination.

5.2.10. My Rule 17 request [PD-014] also invited the Applicant to:

- Provide any other information to demonstrate the anticipated impact from the Proposed Development on the proposed Ramsar site and the newly identified qualifying feature of the pSPA (ruff), which are not considered in the No Significant Effects Report [REP1-001].

5.2.11. The Applicant subsequently considered the extension areas and additional qualifying features of the Teesmouth and Cleveland Coast pSPA and proposed Ramsar site in a *'HRA Addendum'* [REP7-004]. The Applicant confirms [REP7-004] that the geographic extent of the proposed Ramsar is not contiguous with the boundary of the pSPA but is located entirely within it. Accordingly the HRA Addendum [REP7-004] assesses the effects to the proposed Ramsar as being subsumed within the pSPA.

5.2.12. In its response to my Rule 17 [PD-014], NE confirmed [REP7-013] that it was in agreement with my assumption (as set out in the matrices in the RIES [PD-015]) that the conclusions presented by the Applicant in respect to common tern and pied avocet would also apply to ruff. NE also noted [REP7-013] that according to the Air Pollution Information System

[20] Overview of consultation (2018) [on-line]: https://consult.defra.gov.uk/natural-england-marine/teesmouth-and-cleveland-coast-potential-sp/

(APIS) species information[21], ruff has no greater sensitivity to air quality change than other species already considered in the assessment. Furthermore, NE stated [REP7-013] that whilst the Applicant's HRA was completed prior to the commencement of formal consultation on the pSPA and proposed Ramsar, the boundary of the pSPA had not changed significantly from that considered in the NSER.

5.2.13. There have been no concerns raised by IPs during the Examination in relation to the Applicant's identification of European sites and qualifying features.

5.2.14. 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.

5.2.15. I am satisfied that the Applicant has correctly identified all of the relevant European sites and the relevant qualifying features/ interests for consideration within the HRA.

5.3. THE APPLICANT'S ASSESSMENT

5.3.1. The Applicant provided with the DCO application a Habitats Regulations Assessment (HRA) report entitled *'HRA – No Significant Effects Report'* (NSER) [APP-076], which included screening matrices. The NSER concluded that the Proposed Development would have no LSE, either alone or in-combination with other plans or projects, on the qualifying features of the European sites screened into the assessment. The Applicant considers that an Appropriate Assessment (AA) in respect to the Proposed Development is not necessary [REP1-001 and REP6-004].

5.3.2. At Deadline 1, the Applicant provided an updated version of the NSER [REP1-001]. This included revised screening matrices (as requested in my Rule 6 letter [PD-005]) and some minor clarifications around mitigation and superseded the NSER submitted with the dDCO application [APP-076].

5.3.3. At Deadline 5, the Applicant provided within [Appendix 2 of REP5-005] updated versions of Tables 1-4 of the NSER, which superseded those provided in Appendix 1 of [REP1-001].

5.3.4. At Deadline 7, the Applicant provided a *'HRA Addendum'* [REP7-004]. This addendum was submitted in response to points raised in my Rule 17 letter (dated 5 September 2018) [PD-014], regarding the change in status of the Teesmouth and Cleveland Coast pSPA and proposed Ramsar site. The HRA Addendum concluded that the overall findings of the NSER remained unchanged - that the Proposed Development would not result in any LSE, either alone or in-combination with other plans or projects, on the qualifying features of the European sites.

[21] APIS, 'Habitat/ species pollutant impacts database' [on-line], available at: http://www.apis.ac.uk/search-pollutant-impacts (

5.3.5. A signed SoCG between the Applicant and NE has been submitted [REP2-009], which confirmed NE is in agreement with the Applicant's conclusion that there would be no LSE, either alone or in-combination, on European sites. This same confirmation is provided in NE's Written Representation [REP2-071].

5.3.6. A signed SoCG between the Applicant and RCBC [REP4-009] confirms the Council's agreement with the conclusions of the NSER.

5.3.7. A signed SoCG between the Applicant and the EA [AS-003] included HRA under the 'matters agreed' section.

Potential impacts

5.3.8. The Applicant identified emissions to air as the only impact pathway from the Proposed Development with the potential to result in LSE on the qualifying features of the European sites (Sections H2.7 and H3.3.6 of the NSER [REP1-001]; paragraph 1.5 of [REP7-004]). The Applicant has provided a letter from NE in respect to the Proposed Development [REP2-070], which confirms: *"Natural England concurs that the only potential impact on European protected sites is atmospheric emissions".*

5.3.9. The NSER is therefore focused towards potential air quality impacts during operation, which are considered as follows:

- **Effects of air pollutants** emitted by the Proposed Development during operation on European sites within a 15km radius; and
- **In-combination effects** with other air pollution sources (typically various forms of thermal power plants).

5.3.10. Impacts during construction and decommissioning of the Proposed Development have been considered briefly in the Applicant's matrices [REP1-001] and no LSE are identified. The Applicant has confirmed [response to Q1.5.9, REP2-080] that all potential maintenance activities are smaller in scale than the corresponding construction activities and that no LSE will occur as a result of maintenance works.

5.3.11. The NSER states that other secondary effects (specifically disturbance from noise, lighting, presence of workforce activity) are unlikely to lead to LSE due to the lack of connectivity and/ or distance between the European sites and the Proposed Development [REP1-001].

5.3.12. In terms of hydrological pathways, the Applicant has confirmed that the River Tees Estuary is the only water body in hydrological connectivity with the Proposed Development [REP2-080]. The Teesmouth and Cleveland Coast SPA, pSPA, Ramsar and proposed Ramsar site and located in and around the River Tees Estuary [Figure H2.1 of the NSER, REP1-001]. The Proposed Development would connect to the existing Wilton International drainage system, a closed system which outfalls into the River Tees and is regulated through an existing discharge consent [REP2-080]. The existing drainage connection is illustrated on [APP-025]. The Applicant has confirmed that there would be no change from the baseline position in this regard and no potential for LSE on the connected

sites. The Applicant has confirmed that there are no other hydrological pathways to other European sites [REP2-080].

5.3.13. Section H3.3 of the NSER [REP1-001] addresses potential in-combination effects. The Applicant identified other plans or projects within 15km of the Proposed Development with the potential to lead to in-combination effects from changes in air quality, based on their likely scale of emissions to atmosphere. Further to this, an additional search zone (wider than 15km) was used to identify any 'large combustion projects' for consideration in the in-combination assessment. In-combination effects with the following projects have been considered by the Applicant in the NSER [REP1-001]:

- North Sea Pipelines Ltd (ConocoPhillips) CCGT/CHP facility at Seal Sands, north of the Tees;
- MGT biomass facility, south of the Tees (also referred to by the Applicant as the 'Tees Renewable Energy Plant'); and
- Thor Cogeneration Plant, south of the Tees.

5.3.14. The Applicant subsequently determined that the Thor Cogeneration Plant had its licence revoked in August 2013 and as such, it was not considered further in the in-combination assessment. The NSER therefore focuses on the potential for in-combination effects from the Proposed Development together with the North Sea Pipelines Ltd CCGT/CHP facility and the MGT biomass facility.

5.3.15. In their responses to Q1.2.12, NE, the EA and RCBC confirmed agreement [REP2-072; REP2-079 and REP2-081 respectively] that all relevant plans/projects which may result in in-combination effects have been identified and considered by the Applicant in the NSER.

5.3.16. I am content that all relevant potential impacts have been assessed by the Applicant in the NSER.

Implications of change to the application

5.3.17. As reported in section 3.4 of the RIES, during the Examination the Applicant proposed a change to the submitted DCO application [AS-007]. The change would increase the maximum height of the turbine hall from 25m to 32m (above existing ground level) and the maximum height of the heat recovery steam generator from 44m to 45m (above existing ground level).

5.3.18. The Applicant produced a document entitled *'Implications of Requested Change on the EIA'* [AS-009], which concluded that there would be no changes to the conclusions of the ES air quality assessment or the NSER as a result of the proposed changes. The Applicant stated that potential impacts to European sites relate to the emission (and dispersal) of pollutants from the stacks; therefore the assessment is not materially influenced by the heights of other proposed buildings [AS-009].

5.3.19. I sought comments in respect to the proposed changes to the application [PD-006]. NE considered [REP3-008] that the proposed changes would

not significantly alter the modelled dispersal areas for the emissions from the Proposed Development and so does not affect the conclusions of the HRA. The EA [REP3-012] does not anticipate that the proposed changes to the application would generate new or different LSE than that presented in the original DCO application. No interested parties raised concerns regarding the change to the application in respect to HRA. I later accepted these changes for consideration in the Examination [PD-013].

5.3.20. I am content that the change to the application does not affect the Applicant's conclusions as presented in the air quality assessment and NSER

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

5.4.1. During the Examination I raised a number of written questions [PD-008 and PD-012], as well as questions at hearings, regarding the Applicant's approach to the assessment of air quality effects and the assessment of LSE in the NSER [REP1-001]. The questions broadly addressed the matters described as follows, which I report on in the following sections of this Chapter:

- Air quality impacts from the Proposed Development alone;
- Air quality impacts from the Proposed Development in-combination with other plans or projects;
- Location, height and diameter of stacks;
- Mitigation measures, including implications of C-323/7 – People Over Wind, Peter Sweetman V Coillte Teoranta (2018) ('the Sweetman Judgement').

Impacts to air quality

5.4.2. Potential air quality impacts during operation of the Proposed Development are described in the NSER [REP1-001] as follows:

- Increased nutrient nitrogen deposition;
- Increased acid deposition; and
- Increased atmospheric concentrations of oxides of nitrogen (NO_X) (annual mean and 24 hour mean).

5.4.3. Impacts from increased ammonia slip are not considered in the NSER [REP1-001]. Ammonia slip is only an issue where Selective Catalytic Reduction (SCR) is to be implemented. In response to Q2.1.4 of my SWQs [PD-012], the Applicant confirmed that SCR was not being considered for emissions abatement and was not required to achieve BAT or sufficiently low NO_x emissions in respect to the Proposed Development.

5.4.4. The Applicant's approach to assessing the impacts from emissions to air is described in Section H2.8 of the NSER [REP1-001]. The Applicant used

the APIS[22] to establish which of the habitats located within the relevant European sites (which are either qualifying features themselves or support qualifying features of the sites) are sensitive to changes in air quality. Critical levels and critical loads were also obtained from APIS and used as an indicator to determine the potential for significant effects applicable to such a change.

5.4.5. The NSER [REP1-001] explains that levels and loads of air pollutants at habitats in the European sites were predicted using air dispersion modelling, as detailed in ES Chapter 7 [AS-020]. The Applicant sets out in Tables 1-4 of the NSER [REP1-001; superseded by Appendix 2 of REP5-005] the Process Contributions (PCs) which are predicted to occur from the Proposed Development as follows:

- Table 1 (nutrient nitrogen deposition);
- Table 2 (acid deposition[23]);
- Table 3 (long term (annual mean) NO_x); and
- Table 4 (short term (24 hour mean) NO_x).

5.4.6. The PCs predicted for the extension to the Teesmouth and Cleveland Coast pSPA are reported in Tables 1 to 4 of the HRA Addendum [REP7-004]. The Applicant has provided detailed air quality data to support the HRA in [REP4-010].

5.4.7. The Applicant's approach to screening for LSE is described within Section H2 of its NSER [REP1-001] and follows guidance applicable to environmental permitting from the Defra and EA on 'Air Emissions Risk Assessment for Your Environmental Permit'[24] ('Defra/ EA permitting guidance'). In respect to long term impacts, principally this relies on the use of a 1% threshold, whereby if the PC is less than 1% of the critical load, then it is considered that no LSE will occur and further assessment is not required. In respect to short term impacts, this relies on the use of a 10% threshold, whereby if the PC is less than 10% of the critical load, then it is considered that no LSE will occur and further assessment is not required. These criteria are set out in Table H2.2 of the NSER [REP1-001].

Use of EA risk assessment significance criteria

5.4.8. In Q1.2.6, PD-008, I queried the reliance that the Applicant placed on the 1% and 10% significance criteria (as set out in Table H2.2 of the NSER [REP1-001]) in screening for LSE and why these thresholds are considered applicable for the purposes of HRA.

[22] Air Pollution Information System [on-line]: http://www.apis.ac.uk/
[23] Background acid deposition and critical loads are expressed as keq ha $^{-1}$ yr $^{-1}$ and the PC is expressed as a percentage of the critical load
[24] Department for Environment, Food & Rural Affairs and Environment Agency: Air emissions risk assessment for your environmental permit [on-line]. Available from: https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit

5.4.9. The Applicant responded that these thresholds "are used by convention to set the thresholds for assessing the potential for significant effects on ecological receptors" [Q1.2.6, REP2-080].

5.4.10. NE stated [Q1.2.6, REP2-071] that it supported the use of the 1% critical level/load threshold *"in this case"* and considered this suitably precautionary to be used as a guideline in HRA. NE stated that 1% of critical level/load represents a habitat specific estimate of *"inconsequential"* level change in air quality, which it considers suitably precautionary to be used as a guideline in HRA [REP2-071, response to Q1.2.7].

5.4.11. The EA considered [Q1.2.6, REP2-079] that the 1% threshold is a screening level below which the environmental impact would be so low, it would be insignificant.

Use of EA significance criteria for European sites already in exceedance of critical loads or levels

5.4.12. In Q1.1.6 and Q1.2.8 [PD-008], I noted that some of the identified European sites are already in exceedance of critical loads/ levels for given pollutants and queried whether use of the 1% (long term) and 10% (short term) screening thresholds was appropriate in such cases. The NSER [Table H2.1, REP1-001] contains links to Site Improvement plans for the Teesmouth and Cleveland Coast SPA and the North York Moors SPA and SAC, which refer to atmospheric nitrogen deposition as an issue which is currently impacting or threatening the sites.

5.4.13. The Applicant [response to Q1.2.8, REP2-080] noted that critical loads/ levels are widely exceeded throughout the UK due to elevated baseline conditions. It noted that impacts from the PC of the Proposed Development did not exceed the screening thresholds at any habitat sites.

5.4.14. NE [response to Q1.2.8, REP2-071] explained that for the same reasons as stated in its response to Q1.2.6, it supported the use of the 1% critical level or load threshold as a reflection of inconsequential level change in air quality. NE reiterated that it considered the 1% threshold to be *"suitable as a screening threshold in this case with the background pollution levels"* [Q1.2.8, REP2-071].

5.4.15. The EA [response to Q1.2.8, REP2-079] did not wish to comment on whether the thresholds used by the Applicant were suitable; stating that this matter should be considered by NE at this stage.

5.4.16. It is my view that the information provided by the Applicant, NE and the EA during the Examination in response to the points I raised have given me sufficient confidence that the 1% and 10% thresholds are an appropriate benchmark to inform the assessment and to support the determination in respect of likely significant effects at the sites concerned.

In-combination impacts to air quality

5.4.17. The NSER [REP1-001] provides a qualitative assessment of the potential in-combination effects. In respect to other relevant developments, the NSER concludes that there is no potential for LSE on European sites in-combination with the Proposed Development [REP1-001]. As explained by the Applicant in section H3.3.6 of the NSER [REP1-001], these conclusions are made on the basis that:

- An AA was undertaken in 2009 by the Department for Energy and Climate Change (DECC[25]) in respect to the North Sea Pipelines Ltd project, which considered the effects of that development in-combination with the MGT biomass facility and the Thor Cogeneration Plant. This AA concluded that there would be no adverse effects on the integrity of the Teesmouth and Cleveland Coast SPA and Ramsar site.
- The Secretary of State's decision letter in respect to the MGT biomass facility stated that there would be no LSE on the interest features of the Teesmouth and Cleveland Coast SPA and Ramsar sites and that an AA was not required.
- The Thor Cogeneration plant has had its licence revoked.
- The major influences on the identified European sites are considered by the Applicant to be from other pollutant sources, such as agriculture, transport and transboundary sources. The Applicant considers it to be very unlikely that insignificant air pollutant contributions from the Proposed Development could combine with insignificant contributions from other developments to result in LSE on the identified European sites.

5.4.18. The Applicant's conclusion that there would be no LSE on European sites in-combination with the Proposed Development is reiterated in the HRA Addendum [REP7-004].

5.4.19. I had concerns about the robustness of the Applicant's approach to in-combination assessment in absence of quantitative information in the form of air quality modelling The Applicant described in sections H3.3.4, H3.3.5 and H3.3.6 of the NSER [REP1-001] why it considers that a quantitative in-combination assessment is not feasible in this case. The Applicant reiterated this position at Deadline 2 [response to Q1.2.9, REP2-080], at the ISH on Environmental Matters [as reported in REP4-011] and at Deadline 5 [response to Q2.0.3, REP5-005].

5.4.20. In expressing my concerns about the Applicant's approach to in-combination assessment, particularly with regards to small incremental additions to an existing exceedance, I cited the judgement *Wealden District Council v Secretary of State for Communities and Local Government [2017] EWHC 351 (Admin)* ('the Wealden Judgement').. I note that this judgement related to issues surrounding emissions to air as a result of road traffic as opposed to cumulating of point source emissions, although I understand the principle in terms of its applicability

[25] Superseded by the Department for Business, Energy and Industrial Strategy

to the Habitats Regulations to be relevant in the case of the Proposed Development. I raised these points with the Applicant and NE in my Written Questions [Q1.2.9, PD-008 and Q2.0.3, PD-012].

5.4.21. The Applicant's responses to these questions are provided in [REP2-080 and REP5-005] and summarised in paragraphs 3.2.8 to 3.2.14 of the RIES [PD-015]. The Applicant stated [Q1.2.8, REP2-080] that UK air quality has generally been improving based on the longer term trend, which the Applicant considers relevant to the in-combination assessment. The Applicant stated that the main sources of air pollution affecting the European sites are from diffuse sources such as agriculture. As such, the Applicant considers it is *"difficult to undertake any meaningful quantitative in-combination assessment"* [Q1.2.8, REP2-080].

5.4.22. NE set out its position in respect to the Wealden Judgement in [REP2-071 and REP5-010] (as summarised in paragraphs 3.2.9 and 3.2.14 of the RIES [PD-015]). NE acknowledged the findings of the Wealden judgement but confirmed that on the basis of the information provided in this case, it was content that there would be no LSE, either alone or in-combination, on European sites [REP2-071]. NE stated that in reaching this conclusion, it had specifically considered the expected decline in background levels from pollution sources no longer in operation; and the predicted low levels of contributions from the Proposed Development, which are not expected to make a significant difference to the features for which the site is classified [REP2-071].

5.4.23. In my SWQs [PD-012, Q2.0.3], I asked the Applicant to further explain how, in absence of a quantitative in-combination assessment, the findings of no LSE had been derived. In response, the Applicant [Q2.0.3, REP5-005] reiterated its view that in-combination effects are anticipated to be insignificant, stating that that only one additional industrial facility (the Tees Renewable Energy Plant) may be operational in conjunction with the Proposed Development. The Applicant notes that the two plants would not be co-located and that any impacts are therefore anticipated to arise on different locations and habitats [Q2.0.3, REP5-005].

5.4.24. It is not clear why the North Sea Pipelines Ltd (ConocoPhillips) CCGT/CHP facility at Seal Sands (as identified and considered in the in-combination assessment in the NSER [REP1-001]) was not referenced in the Applicant's response to Q2.0.3 [REP5-005].

5.4.25. In Q2.0.3 [PD-012], I queried what information was available to support the Applicant's position of on-going improvements to background emission levels [as stated in REP2-080]. In response, the Applicant stated [REP5-005, Q2.0.3] that UK air quality has generally been improving in the long term, with substantial improvements since the 1960s-80s in terms of sulphur dioxide, oxides of nitrogen and transboundary pollution. The Applicant explained that this trend is continuing, particularly in regards to industrial facilities as a result of the Industrial Emissions Directive (which promotes continued emissions improvement with the adoption of BAT in all such facilities) [REP5-005, Q2.0.3]. Therefore, the Applicant considers that overall air pollution and

deposition at the affected European sites would continue to reduce, in line with national trends [REP5-005, Q2.0.3]. The Applicant has cited a document published by Defra[26] in support of this position [REP5-005, Appendix A].

5.4.26. The Applicant stated that the Wealden Judgement did not stipulate whether in-combination assessment should be undertaken on a qualitative or quantitative basis [REP5-005, Q2.0.3]. Whilst this is correct, I consider that a quantitative analysis would provide additional clarity to the assessment of in-combination impacts. The Applicant has noted that a quantitative assessment would be undertaken as part of the environmental permitting process [REP5-005, Q2.0.3].

5.4.27. In its response to Q2.0.3, NE noted [REP5-010] that the Applicant had provided other information relating to background emission levels in [REP5-005, Appendix A]. NE confirmed that it had no further information to provide in this regard [Q2.0.3, REP5-010].

5.4.28. I note that no quantitative evidence has been presented to the Examination and that if this information had been provided is would likely provide greater clarity demonstrating the position asserted by the Applicant that small incremental changes in pollutant deposition resulting from the Proposed Development could not lead to a LSE in-combination with other plans or projects.

Location, height and diameter of stacks

5.4.29. The Proposed Development includes a maximum of two main stacks, as set out in the dDCO [REP8-009]. During the Examination I considered the location, height and diameter of these stacks and the implications for the Applicant's HRA, as reported below.

Stack location

5.4.30. The Applicant confirmed the stack locations assumed in the ES air quality modelling (and HRA) in its response to my FWQs [Q1.1.26, REP2-080], as follows:

- Western stack: 456437, 520398
- Eastern stack: 456525, 520438

5.4.31. The dDCO [REP8-009] allows for lateral movement of the stacks within the lateral limits of deviation (LoD) for the power station complex (Work No. 1a), as shown on the Works Plan, Sheet 1 [AS-001]. At Deadline 2, the Applicant explained that there is limited space for lateral movement of the stacks within the zone shown on the Works Plans and stated that any minor lateral movement of the stacks within this zone would not cause a change to the conclusions of significance of effect presented in the ES and HRA [REP2-049, Agenda Item 7.4].

[26] Defra (2017) Air Pollution in the UK 2016 https://uk-air.defra.gov.uk/assets/documents/annualreport/air_pollution_uk_2016_issue_1.pdf

5.4.32. At Deadline 2, the EA stated [Q1.8.1. REP2-079] that the locations of the stacks should be set, preferably at the grid references used in the Applicant's air quality modelling. In response, the Applicant [REP3-003] acknowledged that the locations of the stacks may move slightly within the lateral LoD, but considered that it is the stack height that is of more importance for the air quality assessment, rather than their exact locations.

5.4.33. In my SWQs [Q2.1.2, PD-012], I queried whether there was any change to the EA's position regarding the stack locations, as set out in their response to [Q1.8.1. REP2-079]. At Deadline 5, the EA confirmed that taking into account the restrictions imposed by the lateral LoD and the constraints of the site, it was now in agreement that the precise locations of the stacks did not need to be determined through the dDCO [Q2.1.2, REP5-008].

5.4.34. I have considered the position of the Applicant and that of the EA (as set out above), along with the constraints imposed by the lateral LoD, as secured through the dDCO [REP8-009] and Works Plan [AS-001]. I am content that any lateral movement of the stacks within the lateral LoD would not result in any changes to the conclusions presented in the Applicant's NSER [REP1-001] and HRA Addendum [REP7-004].

Stack height

5.4.35. In the earlier iterations of the dDCO [up to and including version 5, REP6-008], Requirement 4 specified a maximum height of 75m above existing ground level for the main stacks.

5.4.36. The Applicant's air quality modelling (as utilised in the ES and NSER) is based on a stack height of 75m [para 7.53, AS-010]. The Applicant provided a Stack Height Sensitivity Assessment in ES Annex E1 [APP-069], which stated at paragraphs E1.8-1.9: *"75 m is the lowest stack height at which impacts on sensitive human receptors are deemed to be acceptable and not significant on ecological receptors".* Therefore, I had concerns that the impacts of a stack up to 75m had not been assessed and explored this issue during the Examination.

5.4.37. At the ISH on the Scope of the Application[27], I queried why no minimum height of the stacks had been specified in the dDCO, in particular noting the above statement in ES Annex E1 [APP-069].

5.4.38. The Applicant responded [Agenda Item 7.6, REP2-049] that on the basis of a 75m stack height, the assessment is able to confidently conclude that emissions to air would not result in significant effects on ecological receptors. The Applicant stated that following further assessment, a smaller stack height could also lead to a conclusion of no likely significant effects [Agenda Item 7.6, REP2-049]. However, in their response to my FWQs [Q1.1.26, REP2-080], the Applicant acknowledged that *"the*

[27] Held on 10 April 2018

threshold for potential likely significant effects would be exceeded at some habitats with a lower stack height [than 75m]".

5.4.39. The Applicant has noted that this matter would be considered in detail as part of the Environmental Permitting process [Agenda Item 7.6, REP2-049].

5.4.40. In my SWQs [Q2.1.1, PD-012], I noted that the dDCO (as drafted at that time) [version 3, REP4-005] did not preclude the final design of the Proposed Development from having a stack height below that which has been assessed in the ES (and accordingly, the HRA) (75m). Q2.1.1 [PD-012] further outlined my concerns that in the absence of a parameter which precluded a stack height of less than 75m, the proposed DCO may result in a development which gives rise to LSE which have not, or are different to, those assessed in the ES (and accordingly, the HRA).

5.4.41. In response, the Applicant provided at Deadline 5 an updated version of the dDCO [version 4, REP5-001]. This included new wording as part of Requirement 4, which specified that if the Applicant wanted to construct the main stacks at a height below 75m, it would have to submit a further assessment *"to the local planning authority/Environment Agency"* to either demonstrate that no new or materially different effects to those identified in the ES would arise from the lower stack height; or put forward additional measures capable of mitigating any LSE which would arise from the lower stack height.

5.4.42. The Applicant submitted a further iteration of the dDCO at Deadline 6 [version 5, REP6-008]; with the wording of Requirement 4 remaining as per [version 4, REP5-001].

5.4.43. I issued a Rule 17 request [PD-014] on 5 September 2018, alongside the RIES [PD-015]. This outlined (with reference to case law[28] and PINS Advice Note 15[29]), my continuing concerns that dDCO Requirement 4 (1) (d) and (2) (b) (detailed design) as currently drafted [REP6-008] may result in the LPA authorising a change to the development to an extent that is beyond what has been assessed in the ES (in relation to the height and diameter of the stack/s). I considered that the proposed new requirement also failed to acknowledge the necessary relationship between what is assessed and examined and what can be authorised. As such, my Rule 17 letter [PD-014] asked the Applicant to:

- Consider further drafting changes to the dDCO in order to fix the stack height and diameter so that it aligns with what has been assessed (for example by amendments to the description of the

[28] R. (on the application of Hubert) v Carmarthenshire CC Queen's Bench Division (Administrative Court), 05 August 2015; and
R. (on the application of Midcounties Co-operative Ltd) v Wyre Forest DC Queen's Bench Division (Administrative Court) 27 March 2009.
[29] Section 17 (in particular paragraph 17.3) of the Planning Inspectorate's Advice Note 15 https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2014/10/advice_note_15_version_1.pdf

authorised development in Schedule 1) and to comment on the above points, with reference to the relevant case law as necessary.

5.4.44. My Rule 17 letter [PD-014] also requested comment from the LPA, as follows:

- In relation to requirement 4 (1) (d) and (2) (b), the LPA is asked to comment on whether or not (in its view) it would have jurisdiction to entertain a subsequent application to approve a stack height of less than 75m.

5.4.45. In response, the Applicant submitted a further iteration of the dDCO at Deadline 7 [version 6, REP7-005], which amended the wording of Requirement 4(2)(b) to state that the height of the main stacks must be 75m above existing ground level – subject to sub-paragraph (3). Requirement 4 sub-paragraph (3) stated [REP7-005]:

"If the undertaker wants to construct the main stacks at a height of less than 75m above existing ground level, the undertaker must first prepare and submit a further assessment to the relevant planning authority for approval in consultation with the Environment Agency which demonstrates that there will be no new or materially different environmental effects to those identified in the environmental statement arising from the proposed lower stack height"

5.4.46. Wording included in Requirement 4(3)[version 5, REP6-008] which would allow the Applicant to put forward additional measures capable of mitigating any LSE which would arise from the lower stack height, had been deleted in version 6 of the dDCO [REP7-005].

5.4.47. I did not receive a response from RCBC to my Rule 17 request [PD-014], but it is the Applicant's view [REP7-010] that *"…the proposed wording appropriately constrains the ability to alter the stack height and would not allow the relevant planning authority to authorise a change which is beyond the remit of what has been assessed in the submitted EIA".* The Applicant considers that Requirement 4(3) is not an open ended requirement to change the stack height and that it *"appropriately restricts"* the basis on which any changes in stack height can be permitted by the relevant planning authority [REP7-010].

5.4.48. The Applicant explained [REP7-010] that it would like to retain some flexibility in stack height pending the final decision on a technology provider, in particular in case there is an opportunity to reduce the stack height below 75m to reduce the potential visual impacts of the Proposed Development.

5.4.49. In the Applicant's final version of the dDCO [version 7, REP8-009], the wording of Requirement 4 remained as per [version 6, REP7-005].

5.4.50. The Applicant's air quality modelling (as utilised in the ES and NSER) is based on a stack height of 75m [para 7.53, AS-010] and information has not been provided to assess the likely effects associated with a stack height below 75m. The Applicant has acknowledged [Q1.1.26, REP2-080] that *"the threshold for potential likely significant effects would be*

exceeded at some habitats with a lower stack height [than 75m]". For these reasons, as set out in further detail in the Air Quality section and in Chapter 8 of this Report, it is my view that the DCO cannot allow for a stack height of less than 75m. I therefore recommend that if the SoS decides to make the DCO, the Applicant's preferred version of Requirement 4 as set out in the final version of the dDCO [REP8-009] should be modified by the deletion of sub-paragraph (3) of Requirement 4. I have made my conclusions in respect to HRA on the basis of the stack height parameter assessed, 75m.

Stack diameter

5.4.51. The air quality assessment presented in the ES [AS-010] (and therefore the HRA) is based on an 'optimised' 8m stack diameter. No sensitivity testing for stack diameter was submitted with the DCO application, although I note from the Scoping Opinion [APP-063] that the EA recommended this be undertaken. A parameter for the stack diameter was not specified in the dDCO submitted with the application [version 1, APP-005].

5.4.52. The EA, in its Written Representation [REP2-032], stated that the Applicant had not considered the technical feasibility of reducing the stack diameter to aid environmental monitoring of emissions and to increase the exit velocity from the stack to improve dispersion. In response, the Applicant [REP3-002] stated that these details could only be considered once the gas turbine technology has been selected; as such the final stack diameter would be determined as part of the Environmental Permitting process.

5.4.53. Q2.1.3 [PD-012] outlined my concern that changing the stack diameter from that specified in the air quality assessment may alter the findings of the air quality assessment (and accordingly the HRA). I requested [Q2.1.3, PD-012] that the Applicant either explain how its assessment work addressed these concerns or alternatively, amend the dDCO to reflect the relevant parameters.

5.4.54. At Deadline 5, in response to Q2.1.3, the Applicant stated [REP5-005] that risk of significant effects was not a function of stack diameter, but of plant capacity and stack height. The Applicant considered that sensitivity testing would offer no material benefit (in absence of selection of the gas turbine technology) and stated that once this technology is selected, changes to the stack diameter are likely to be limited [Q2.1.3, REP5-005].

5.4.55. Nonetheless, the Applicant stated [REP5-005] that it had added some wording into version 4 of the dDCO [REP5-001], to "ensure that the stack diameter would be 8m unless the undertaker can demonstrate that a different diameter would not result in any new or materially different effects and can be agreed with the relevant planning authority in consultation with the EA". However, this wording was not included in version 4 of the dDCO submitted at Deadline 5 [REP5-001]; or version 5 of the dDCO submitted at Deadline 6 [REP6-008]. I reported this in paragraph 3.3.20 of the RIES [PD-015].

5.4.56. As referenced above, I issued a Rule 17 request [PD-014] on 5 September 2018, alongside the RIES [PD-015]. This asked the Applicant to consider further drafting changes to the dDCO in order to fix the stack diameter so that it aligned with what has been assessed.

5.4.57. The EA [REP7-006] noted from the RIES that wording to fix the stack diameter was not included in versions 4 or 5 of the dDCO [REP5-001 and REP6-008, respectively]. The EA requested [REP7-006] that this wording was included in any subsequent versions of the dDCO.

5.4.58. At Deadline 7, the Applicant submitted version 6 of the dDCO [REP7-005]; within which Requirement 4(2) had been amended to specify that the stack diameter must be between 7 and 8m (this wording remained unchanged in the final version of the dDCO [version 7, REP8-009]). Alongside this, the Applicant submitted a 'Stack Diameter Sensitivity Study' [REP7-014], which provides results for internal stack diameters of 7m, 7.5m and 8.5m (in comparison to the 8m base scenario).

5.4.59. [REP7-014] concludes that a stack diameter range of 7-8m would not make a material difference to the conclusions presented in the ES air quality assessment. I note from Table 2 of [REP7-014] that the maximum concentrations of NO_x are lower at 7m and 7.5m than at 8m; it demonstrated that at 8.5m (ie larger stack diameters), the maximum concentrations start to increase and the impacts therefore worsen.

5.4.60. For these reasons, as set out in further detail in the Air Quality section of this Report, I am content that the stack diameter is adequately restricted by Requirement 4 of the final dDCO [REP8-009] to between 7m and 8m, with 8m representing the 'worst case'. I have made my conclusions in respect to HRA on the basis of a stack diameter of between 7m to 8m.

5.5. Mitigation and the Sweetman Judgement

5.5.1. As reported in Section 3.5 of the RIES [PD-015], the Sweetman Judgement was issued on 12 April 2018, during the Examination of the Proposed Development. This ruled that mitigation measures (referred to in the judgement as measures which are intended to avoid or reduce effects) should be assessed within the framework of an AA and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the point of determining LSE (normally referred to as the HRA screening stage).

5.5.2. The Applicant considers that the Sweetman judgement does not affect the HRA screening exercise carried out by the Applicant, on the basis that no mitigation measures have been relied upon [REP4-011]. In support of this statement, the Applicant referred [REP4-011] to paragraph H.1.45 of the NSER [REP1-001], which confirms that "*No mitigation measures have been relied upon to reach the conclusions in this report as no adverse effects were identified".*

Emissions to air

5.5.3. The Applicant confirmed [Q1.1.20, REP2-080] that the air quality assessment and NSER take account of *"embedded measures",* which are described as turbines that meet current BAT for NO_x emissions and stack design to achieve sufficient dispersion. The Applicant has stated that no *"further mitigation"* (i.e. further to the embedded measures) is required in respect to emissions to air [Q1.1.20, REP2-080].

5.5.4. The Applicant also referred to paragraph 7.126 of ES Chapter 7 [AS-010], which explicitly states that no further mitigation measures in respect to air quality are required over and above the *"base design",* which is described as a turbine that meets future BAT NO_x emissions of 30mg/Nm^3 and an appropriate stack height to ensure sufficient dispersion.

5.5.5. In my SWQs [Q2.1.5, PD-012], I asked NE whether it agreed with the Applicant's position that BAT for NO_x emissions and stack design are *"embedded measures"* and not avoidance or reduction measures as described in the Sweetman Judgement. In response, NE stated [Q2.1.5, REP5-010] that the Sweetman Judgement was a recent ruling and that there is currently little guidance from the courts as to what constitutes avoidance or reduction measures. NE advised that where the Competent Authority is unsure whether certain matters are avoidance or reduction measures, it should consider whether to carry out an AA to avoid legal challenge [REP5-010].

5.5.6. At Deadline 6, the Applicant further stated that the gas turbine design and stack heights are "inherent features and characteristics of the design" of the Proposed Development" and "not protective measures intended to avoid or reduce harmful effects on European sites" [Q2.1.5, REP6-004]. The Applicant considers there is no need for the Competent Authority to carry out an AA [REP6-004]. I examine this matter in more detail later in this Chapter.

Emissions to water

5.5.7. As reported in paragraphs 3.5.9 to 3.5.12 of the RIES [PD-015], I have also considered the implications of the Sweetman Judgement in regards to potential emissions to water from the Proposed Development.

5.5.8. Requirement 13(2)(f) of the dDCO [REP8-009] refers to *"…mitigation measures designed to protect controlled waters"* during construction of the Proposed Development, with such measures described in the Updated Mitigation Summary Table [REP2-006]. As described in paragraphs 3.0.8 and 3.0.9 of the RIES [PD-015], the River Tees is hydrologically connected to the Proposed Development via the existing drainage system at the Wilton International site. This is a closed system which outfalls into the River Tees and is regulated by an existing discharge consent [REP2-080]. The Applicant has confirmed [REP2-080] that there would be no change from the baseline position in this regard and considers there is no potential for LSE on the connected sites (the Teesmouth and Cleveland Coast pSPA, SPA, Ramsar and proposed Ramsar).

5.5.9. In my SWQs [Q2.2.5, PD-012] I asked NE whether it was in agreement with the Applicant's position that the proposed measures to ensure safe discharge of water to the existing drainage system (as described in [REP2-006]) are *"embedded measures"* and not avoidance or reduction measures as described in the Sweetman Judgement.

5.5.10. In response, NE advised [Q2.2.5, REP5-010] that the Sweetman Judgement was a recent ruling and that there is currently little guidance from the courts as to what constitutes avoidance or reduction measures. NE stated that where the Competent Authority is unsure whether certain matters are avoidance or reduction measures, it should consider whether to carry out an AA to avoid the risk of legal challenge [REP5-010].

5.5.11. At Deadline 6, the Applicant stated [Q2.2.5, REP6-004] that the only impact that is relevant in the context of potential effects on European sites is the emission and dispersion of NO_x. I note that this is consistent with the view of NE as evidenced in [REP2-070]. The Applicant has further explained that the reference in dDCO Requirement 13(2)(f) to measures to protect controlled waters relate to securing compliance with licencing conditions and are not intended to avoid or reduce a potential significant adverse effect on a European site; as such they were not considered in the NSER [Q2.2.5, REP6-004].

5.5.12. As reported earlier in this Chapter, I am content that all relevant potential impacts have been assessed by the Applicant in the NSER. Having regard to the evidence presented and the views of NE as expressed in [REP2-070], I am satisfied that emissions to water would not result in LSE on European sites.

5.6. Findings in relation to HRA screening

5.6.1. I note that the levels of PCs which are predicted from the Proposed Development, as set out in Tables 1-4 of the NSER [REP1-001; superseded by Appendix 2 of REP5-005] and Tables 1-4 of the HRA Addendum [REP7-004]), are generally not expected to exceed the thresholds set out in the Applicant's assessment methodology (as set out in Table H2.2 of the NSER [REP1-001]).

5.6.2. In the case of the North York Moors SAC and SPA, the NSER [REP1-001] reports that short term (24 hour) mean PC for NO_x would be 12%; with a PEC of 31.8 [Table 4, REP1-001]. As these PCs are over the 10% threshold utilised in the Applicant's assessment methodology, but the PECs are under the 70% threshold (as set out in Table H2.2 of the NSER [REP1-001]), the Applicant has undertaken a qualitative in-combination assessment and presented this in the NSER [REP1-001].

5.6.3. Subsequent to the NSER [REP1-001], in the case of the Teesmouth and Cleveland Coast pSPA the HRA Addendum [REP7-004] reported that annual mean (PC) for NO_X would exceed the 1% screening threshold *"in one small area of the* [Teesmouth and Cleveland Coast] *pSPA"* (specifically, 1.25%). I note that this is over the 1% threshold utilised in the Applicant's assessment methodology (as set out in Table H2.2 of the

NSER [REP1-001]). I also note that no quantitative evidence has been presented to demonstrate that small incremental changes in pollutant deposition resulting from the Proposed Development would not result in a LSE in combination with other plans or projects.

5.6.4. Furthermore, NE has advised [REP5-010] that where the Competent Authority is unsure whether certain matters are avoidance or reduction measures, it will need to consider whether to carry out an AA not least to reduce the risk of legal challenge. In light of the Sweetman Judgement and NE's advice in [REP5-010], it was unclear to me whether reliance can be placed on the 75m stack heights and turbines that meet current BAT for NO_X in excluding LSE. I reported this position in the RIES [PD-015].

5.6.5. Accordingly, in keeping with the precautionary principle of HRA, I consider it necessary to consider whether emissions to air (from the Proposed Development alone and in-combination with other plans or projects) would result in AEoI of the six European sites. I produced Stage 2 integrity matrices for all six European sites to consider AEoI, which were included in Annex 2 of the RIES [PD-015]. I report my findings in respect to AEoI in the following sections of this Chapter.

5.7. CONSERVATION OBJECTIVES

5.7.1. Links to the conservation objectives for the SPAs and SAC considered in the Applicant's screening assessment are provided within Table H2.1 of the NSER [REP1-001], with the exception of the Teesmouth and Cleveland Coast pSPA.

5.7.2. I am aware that the conservation objectives for the Teesmouth and Cleveland Coast pSPA became available on NE's website[30] in August 2018, subsequent to the submission of the NSER [REP1-001]. This document updates and replaces the previous version of the Conservation Objectives (dated 30 June 2014) and reflects the consultation initiated in respect to the pSPA.

5.8. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI) OF EUROPEAN SITES

5.8.1. The Applicant has concluded that the Proposed Development would not result in a LSE any European sites [REP1-001 and REP7-004]. The Applicant has therefore not presented information specifically in relation to the assessment of effects on the integrity of the European sites, including whether there are any implications on the conservation objectives of these sites.

5.8.2. NE advised [REP5-010] that where the Competent Authority is unsure whether certain matters are avoidance or reduction measures, it will need to consider whether to carry out an AA to avoid the risk of legal

[30] European Site Conservation Objectives for Teesmouth & Cleveland Coast SPA and pSPA (2018) [on-line] http://publications.naturalengland.org.uk/publication/6619918699069440

challenge. In light of NE's advice, it remained unclear to me whether the 75m stack height and turbines that meet current BAT for NO_X emissions could be relied upon to exclude LSE. As such, I produced Stage 2 integrity matrices, which were included in Annex 2 of the RIES [PD-015].

5.8.3. Advice from NE has confirmed that LSE can be excluded on the basis of the measures described in the Applicant's HRA report [REP2-009 and REP2-071]. By extension, I consider that the measures would also be adequate to exclude AEoI of European sites and documented this position in the Stage 2 integrity matrices [PD-015]. In their comments on the RIES, NE confirmed [REP7-013] that they supported my conclusions in this regard.

5.8.4. Subsequent to publication of the RIES, the Applicant submitted the HRA Addendum [REP7-004] in response to my Rule 17 request [PD-014].

5.8.5. The HRA Addendum [REP7-004] reports that annual mean (PC) for NO_X would exceed the 1% screening threshold *"in one small area of the* [Teesmouth and Cleveland Coast] *pSPA"* (specifically, 1.25%). The specific area of the pSPA where this exceedance would occur is not identified in the HRA Addendum.

5.8.6. I note that Table 3 of the HRA Addendum [REP7-004] identifies an annual mean PC for NO_x of 0.374 µg m-3 (1.25% of the CL) at the pSPA; whereas previously, NSER Table 3 [REP5-005] identified an annual mean PC for NO_x of 0.283 µg m-3) (<1% of the CL) at the pSPA. In addition, the background level of NO_x for the pSPA is identified as 19.3 µg m-3 in Table 3 of the HRA Addendum [REP7-004]; whereas the background level of NO_x for the pSPA is identified as 31.8 µg m-3 in NSER Table 3 [REP5-005].The HRA Addendum was submitted at a late stage in the Examination and I did not have a chance to clarify the reasons for these differences with the Applicant. The boundary of the pSPA as presented in NE's consultation information[31] does not appear (in my view) to extend nearer the application site than was presented in the NSER. Therefore, my assumption is that the background levels for the pSPA (as presented in the HRA Addendum) were derived from different locational or source data.

5.8.7. As reported earlier in this Chapter, the NSER [Table 4, REP1-001] identifies the short term (24 hour) mean PC for NO_x as 12% for the North York Moors SAC and SPA (i.e. over the 10% threshold utilised in the Applicant's assessment methodology). The PEC is identified as 31.8 [Table 4, REP1-001].

[31] Departmental Brief: Teesmouth and Cleveland Coast pSPA and Ramsar (2018) [on-line] https://consult.defra.gov.uk/natural-england-marine/teesmouth-and-cleveland-coast-potential-sp/supporting_documents/Teesmouth%20and%20Cleveland%20Coast%20pSPA%20Departmental%20Brief.pdf

5.8.8. With reference to Table H2.2 of the NSER [REP1-001], where the PC >1% of the CL (long term impact) and the PEC< 70% of the CL, the corresponding assessment is described as: *"Insignificant contribution and considered in the ecological assessment to have no likely significant effects for the Project alone but further assessment may be required for long-term effects in combination with other projects to determine the effects on habitats and species".*

5.8.9. I note the potential need for further assessment of long-term in-combination effects, which is considered by the Applicant on a qualitative basis in the NSER [REP1-001]and in respect to the Teesmouth and Cleveland Coast pSPA, considered further in paragraph 1.19 of the HRA Addendum [REP7-004].

5.8.10. The Applicant's view [REP7-004] is that despite the exceedance of the 1% threshold *("in one small area of the pSPA"*), the background levels are sufficiently low at this location that the annual mean PEC for NO_x is less than 70% of the critical level in any event; therefore the potential impact from the Proposed Development would still not be significant. As such, the Applicant considers [REP7-004] that the overall findings of the NSER remain unchanged and that the Proposed Development would have no LSE, either alone or in-combination with other plans or projects, on the qualifying features of the European sites screened into the assessment. As with the NSER [REP1-001], no quantitative analysis of the potential for long-term in-combination effects is provided in the HRA Addendum [P7-004].

5.8.11. NE had not commented on the HRA Addendum [REP7-004] by the close of Examination. It is a matter for the Competent Authority to satisfy himself/herself as to the position but I am content that there is no evidence to show that its contents would change their view that there would be no AEoI of the European sites, as expressed in [REP7-013].

5.8.12. On the basis of the information before me; having regard to the measures secured through the Recommended DCO and the views of NE as the SNCB, it is my view that the predicted low levels of contributions from the Proposed Development would not impact in a significant way the features for which the identified European sites are classified. I am satisfied that the Proposed Development (alone and in-combination with other plans or projects) is not likely to have an AEoI of the following European sites:

- Teesmouth and Cleveland Coast SPA;
- Teesmouth and Cleveland Coast pSPA,
- Teesmouth and Cleveland Coast Ramsar site;
- Teesmouth and Cleveland Coast proposed Ramsar site;
- North York Moors SAC; and
- North York Moors SPA.

5.8.13. I note that this conclusion is shared by NE, as confirmed in [REP7-013]. I have not received any submissions from IPs which dispute this conclusion.

5.8.14. For the reasons set out above and in the Air Quality section of this Report, I have made my conclusions in respect to HRA matters on the basis of the parameters assessed in the information before me; that being a stack height of 75m and a stack diameter of between 7m and 8m.

5.9. OVERALL HRA CONCLUSIONS

5.9.1. I have taken into account the views expressed by NE, in particular their agreement that there would be no AEoI of the European sites [REP7-013]. I advise the SoS that on the basis of the information before me, that the Proposed Development would have no AEoI, either alone or in-combination with other plans or projects, on any European site.

5.9.2. I am satisfied that sufficient information has been provided by the Applicant to enable the SoS to undertake an AA, should he consider it necessary. My assessment within this Chapter and the information contained within the RIES would assist the SoS in this task.

6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. This Chapter provides a balanced evaluation of the planning merits of the Propose Development. It does so in the light of the legal and policy context set out in Chapter 3 and individual policy requirements identified in Chapters 4 and 5 above. It applies relevant law and policy to the application in the context of the matrix of facts an issues set out in Chapter 4. Whilst Habitats Regulations Assessment (HRA) has been documented separately in Chapter 5, relevant facts and issues set out in that chapter are fully taken into account here.

6.2. THE PLANNING BALANCE

Air quality and emissions

6.2.1. The construction process will emit plant exhaust and dust. However, measures to control the adverse effects of these emissions are in place and secured in the Recommended DCO.

6.2.2. Operation of the Application Proposal will emit CO_2. However, this is in a context where NPS-EN-1 identifies an ongoing need for fossil fuel plant.

6.2.3. The Applicant has demonstrated that the Proposal will be designed to achieve BAT and ensure that there are no adverse effects on human health or sensitive ecological receptors.

Biodiversity

6.2.4. The ES assessment of effects on the biodiversity of the site itself, and of nationally and locally designated sites has complied with the advice in Section 5.3 of NPS EN-1. The Applicant has demonstrated that there would be no likely significant effects on such sites as a result of the construction and operation of the Proposed Development. I advise the SoS that on the basis of the information before me, that the Proposed Development would have no Adverse Effects on Integrity, either alone or in-combination with other plans or projects, on any European site. I find that sufficient information has been provided by the Applicant to enable the SoS to make an appropriate assessment, should he consider it necessary.

Economic and social effects

6.2.5. The Proposed Development will generate social and economic benefit in the form of employment and expenditure in the local, regional and national economies. The Applicant has entered into a S106 obligation with RCBC to facilitate employment opportunities arising from the Development being made available local firms. The Proposal complies with NPS EN-1and this weighs positively in the balance.

Historic environment

6.2.6. The Proposed Development will not harm known historic assets in the locality and the re-use of a previously developed site has resulted in any such adverse impact being avoided. There are no known archaeological assets within the site which could be disturbed or destroyed by the development, so there is no need for mitigation. The development complies with the policies in NPSs EN-1 and EN-2 and accordingly this consideration is neutral.

Landscape and visual impacts

6.2.7. The Proposed Development will cause limited harm in landscape terms and some adverse visual impact to nearby senstitive receptors. However the site is brownfield land which was previously the site of a large electricity generation plant, and forms part of the Wilton International Site, with a history of large scale industrial development including major chemical plants. It would make effective use of existing strategic planting and landscaping to mitigate visual impact in the wider landscape, apart from the upper parts of the tallest structures which cannot realistically be screened. However, in the context of the existing extensive large scale industrial landscape it will not result in significant landscape or visual harm, even when viewed from the high ground at Eston Nab. The development makes use of existing strategic road infrastructure, together with existing gas and electricity connections and infrastructure without requiring any new connections. The Applicant has sought to mitigate both landscape and visual harm and in doing so has complied with NPS Policies EN-1 and EN-2. The level of harm is anticipated by these policies and so does not weigh against the development.

Noise and Vibration

6.2.8. Noise and vibration will be appropriately managed and the Application Proposal complies with NPS EN-1 and EN-2. This consideration is neutral.

Transportation and Traffic

6.2.9. Construction and operational traffic will not have a significant effect on the existing road network or neighbouring communities. NPS EN-1 is complied with and this consideration is neutral.

Water Framework Directive

6.2.10. The Proposed Development can be supplied with water and will make use of an existing consented outfall via the Wilton International Site. It is expected that the Development will not give rise to any significant adverse impacts upon WFD water bodies. The EA has agreed that the Applicant has met the requirements of the WFD. I conclude that issues arising from the WFD have been satisfactorily addressed in the Application and that the advice in NPS EN-1 Section 5.15 has been complied with. This weighs positively in the balance.

Combined heat and power (CHP) readiness

6.2.11. The Application Proposal meets NPS EN-2 requirements to be CHP ready. This weighs positively in the balance.

Carbon capture and storage (CCS) readiness

6.2.12. The Applicant has demonstrated that the requirements of CCS readiness can be achieved within the site up to a limit of 1,520 MWe until such time as it can be demonstrated that the CCR plant for the full 1700MWe can be accommodated within the DCO boundary. A bespoke requirement has been included in the final dDCO to limit the electrical output to 1,520 MWe until it can be demonstrated that capacity for accommodating the full CCS requirement is available.

6.3. FINDINGS AND CONCLUSIONS

6.3.1. There are no adverse impacts of sufficient weight to indicate that the DCO should not be made. The Proposed Development would result in less than significant harm to interest and any harm has been mitigate where possible as required by NPS policy. I conclude that the limited harm identified is outweighed by the substantial benefit from the provision of energy to meet the need identified in NPS EN-1 and by other benefits of the application as summarise above. There is no breach of NPS policy overall.

6.3.2. For the reasons set out in the preceding chapters and summarised above, I conclude that the Proposed Development is acceptable in principle in planning terms. I carry this forward to my overall conclusion set out in Chapter 9 below, noting that my reasoning above identifies a basis for a small number of changes to the dDCO, documented in Chapter 8 below.

7. COMPULSORY ACQUISITION AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The Proposed Development is intended to be delivered on land that is wholly in the existing and intended control of the Applicant. On that basis:

- the dDCO contains no provisions for compulsory acquisition (CA) or temporary possession (TP) powers; and
- there are no Affected Persons with interests affected by it.

Examination issues

7.1.2. A landownership/interests schedule was submitted with the Application [APP-007]. S 44 of PA2008 places a duty on the Applicant to make 'diligent inquiry' to identify persons who may have an interest in the land wither as owners, lessees, tenants or occupiers (Category 1), persons interested in the project site or have the power to sell, convey or release land (Category 2), or persons who would or might be entitled to make a claim for compensation for the taking, or injurious affection, of land subject to compulsory purchase or a claim for the depreciation of land (Category 3).

7.1.3. The Applicant affirms that such a diligent inquiry has been undertaken in accordance with s44.The project does not require any compulsory acquisition of land. All works will take place on land of which SCU (the Applicant) owns the freehold. Similarly no acquisition or extinguishment or interference with rights of any other party is required in order to deliver the project.

7.1.4. The Applicant has made diligent inquiry and identified only two s44 Persons:

- National Grid, who owns the existing substations on the Project Site on land, leased from SCU, and who run cables that run underground through part of the project site.
- Northern Powergrid (Northeast) Limited who own a cable which runs through part of the project site.

7.1.5. These interests are documented in Part 2 of the land ownership statement [APP-007].

7.1.6. The Applicant states that:

'*With respect to National Grid and Northern Powergrid, it is not proposed that their interests shall be subject of powers of compulsory acquisition, rights to use land, or rights to carry out protective works to buildings. As such there are no persons in Category 1 or 2 which have interests in land as described in Regulation 7(1)(a) of the Infrastructure Planning (application: Prescribed Forms and Procedure) Regulations 2009 which it*

is proposed shall be subject of powers of compulsory acquisition, rights to use land, or rights to carry out protective works to buildings.. In addition, there is no land or interest which falls with in regulation 7(1) parts (b) to (e). After diligent inquiry SCU has not identified any Category 3 persons as defined in s57(4) of PA2008. As such, it is not applicable to provide a Book of Reference (BoR) with the Application. The Application instead includes this Land Ownership and Interests Schedule which identifies Category 1and 2 persons for the purposes of Sections 42(1)(d), 44, 56(2)(d) and 57 of PA2008'.

7.1.7. At the ISH on the Scope of the Application the Applicant confirmed that the proposed development can be undertaken without the need for land acquisition or acquiring rights over land, and would submit additional plans to demonstrate this [REP2-041, REP2-050, REP2-077]. The Applicant confirmed that the private road shown on the existing access plan is owned (freehold) and controlled by the Applicant, and there are no limitations that restrict use of it for the proposed development. No request for protective provisions was made by Northern Power. [REP2-049]

7.1.8. On 6 October 2018 National Grid wrote to confirm that whilst National Grid Infrastructure lies within and in close proximity to the order boundary, on National Grid agreed and signed a Statement of Common Ground with Sembcorp Utilities (UK) Limited on 11 May 2018 [AS-031]. The SoCG states that 'It has been agreed by both parties that Protective Provisions are not needed in the DCO, as leases between SCU and NGET (National Grid Electricity Transmission) are being varied and updated to allow for the connections to be made. There are no hindrances to these leases being agreed in a suitable timeframe to enable the development to proceed. The leases will cover NGET rights and any protections that may require and as such NGET are satisfied that they do not require any additional protective provisions' [REP2-038].

7.2. EXA'S CONCLUSION ON COMPULSORY ACQUISITION/PROTECTIVE PROVISIONS

7.2.1. Having regard to the information submitted with the application and additional plans and responses submitted by the Applicant in the course of the Examination, and the SoCG with NGET [REP2-038], I am satisfied that the there is no requirement for Compulsory Acquisition, Temporary Possession or Protective Provisions to be included in the DCO for this project. No individual or corporate body identified themselves as Affected Persons.

8. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

8.1. INTRODUCTION

8.1.1. The application draft Development Consent Order (dDCO) [APP-005] and the Explanatory Memorandum (EM) [APP-006] 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.

8.1.2. The draft DCO draws on drafting used in consents for similar developments where appropriate, with bespoke elements incorporated as necessary to address the circumstances and requirements of this particular project. Where logical to do so, the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (The Model Provisions) have been taken into account and elements of the draft Order are based on those model provisions. However the Localism Act 2011 removed the requirement for the decision-maker to have regard to the prescribed Model Provisions and so a comparison between the model articles and requirements and those of the draft Order has not been provided. The draft DCO and subsequent iterations are in the form of a statutory instrument as required by s117(4) of the PA2008.

8.1.3. The draft DCO was updated several times during the course of the Examination. This Chapter provides an overview of the contentious and non-contentious changes made to the DCO during the Examination process, between the application draft DCO) and the final draft submitted at Deadline (DL) 8 [REP8-005]. It then considers changes made to the draft DCO in order to arrive at the Recommended DCO in Appendix D to this Report.

8.1.4. I do not report on every change made in the updated versions, as some were the result of typographical or grammatical errors or were minor changes in the interests of clarity following discussion between the Applicant and relevant interested parties, or as a result of my written questions.

8.2. THE DCO AS APPLIED FOR

8.2.1. The draft DCO is structured as follows:

8.2.2. Part 1, Articles 1 and 2 sets out how the Order may be cited and when it comes into force. Article 2 sets out the meaning of the various terms of the Order;

8.2.3. Part 2, Articles 3 and 4 provide development consent for the Proposed Development, and allow it to be constructed and maintained

8.2.4. Part 3 sets out the framework for operation of the Proposed Development. Article 5 and 6 provides for the operation and set the limits of deviation. Article 7 sets out who has the benefit of the powers of

the Order and how those powers can be transferred. Article 8 concerns the application of legislative provisions and Article 9 sets out a defence to proceedings in respect of statutory nuisance.

8.2.5. Part 4, Article 10 concerns the application of landlord and tenant law. Article 11 requires the Development Consent to be treated as specific planning permission for the purposes of s264(3)(a) of the Town and Country Planning Act 1990. Article 12 specifies the Plans to be certified as part of the DCO. Articles 13 and 14 provide for arbitration of disputes and procedures in relation to certain approvals.

8.2.6. Schedule 1, Part 1 defines the development authorised by the DCO. Part 2 sets out the specific Requirements to which the grant of Development Consent will be subject.

8.3. CHANGES DURING EXAMINATION

8.3.1. I held an ISH into the scope of the Application immediately after the Preliminary Meeting at which a Proposed Change to the Application was discussed. The changes and the consultation arrangements are detailed in Section 2.2 above, together with my ruling on the subject. The Applicant confirmed that SCU is the freeholder owner of all the land needed for the Development and that the rights of other parties with an interest in the land could be protected without the need for protective provisions.

8.3.2. I asked a number of questions relating to the draft DCO in FWQs [PD-008] and SWQs [PD-012]. The Applicant's responses and those of other relevant IPs are all in the Examination Library. In response to these questions a number of non-contentious changes were made to the provisions of the DCO in the interests of clarity, precision and consistency with other recent confirmed DCOs. Some changes were made to definitions to narrow the scope of the powers conferred, for example in respect of permitted development. The Applicant was asked to ensure that all application or subsequent plans and documents were up to date and that the most recent version was referenced in the final preferred DCO. Clarification on a number of issues were also explored in the ISH on the draft DCO, held on 14 June 2018. The Applicant's responses can be found in [REP4-002].

8.3.3. The following non-contentious amendments to the draft DCO are of particular note:

8.3.4. **Article 2:** The Applicant was asked to narrow the scope of works which could be undertaken prior to commencement. (REF Q1.3.4). In response, the Applicant updated the dDCO to include a separate definition of 'preliminary works' to include only works that are preparatory and minor in nature [REP2-080].

8.3.5. **Article 2:** The Applicant was asked to clarify the definition of 'maintain' (REF Q1.3.7). The dDCO was updated so that maintainance is permitted 'to the extent that it would not give rise to any materially new or

materially different environmental effects to those already assessed in the ES [REP2-080].

8.3.6. **Article 6:** With regard to limits of deviation shown in the works plan [AS-001] the Applicant was asked to demonstrate how this deviation had been addressed in the works plan and confirm that the placement of works anywhere within the limits of deviation would not affect the conclusions of the ES or HRA [REF Q1.3.12]. With regard to lateral deviation, the Applicant confirmed that there is very limited space for lateral movement of the main blocks with the stacks located to the north of the site. Moving the stack locations by 20m would simply move the worst affected offsite location or air quality impacts correspondingly. The predicted concentration at this location is well within the standards designed to protect human health. At distant nature conservation sites change would be negligible. Any noise impacts of lateral movement would be addressed through mitigation. Lateral movement of the stacks and main structures by less than three stack widths would not change the visual impact in any material way [REP2-080]. (Vertical deviation is addressed below in respect of Requirement 4.)

8.3.7. **Article 7**: In response to FWQ1.3.13, the Applicant agreed that Article 7 (2) (that consent for transfer of the benefit of the Order should not be unreasonably withheld or delayed) was unnecessary and could be deleted [REP2-080].

8.3.8. **Sch 1, Part 1 Work No 2(5):** The Applicant was asked to explain how, in the event that associated development does give rise to materially different effects from those assessed in the ES, the impact would be assessed and what mitigation would be necessary [Ref Q1.2.23]. The Applicant updated the dDCO to state that associated development would only be permitted where it 'will not' give rise to such effects [REP2-080].

8.3.9. **Requirement 2:** The Applicant was asked to provide a guarantee (through the dDCO) that construction of the second train would not commence at a point later than that assessed in the ES, to avoid the risk of the assessment becoming outdated [Ref Q1.3.26]. Requirement 2 of the dDCO was amended to ensure that construction of the second train must start within 5 years of the first train becoming operational [REP2-080].

8.3.10. **Requirement 5:** Requirement 5 was updated in the draft DCO [version 3, REP4-005] to require that the external lighting schemes for both construction and operation phases must accord with the Guidance Notes for the Reduction of Obtrusive Light GN01:2011.

8.3.11. **Requirement 13:** Construction Environmental Management Plan (CEMP) The CEMP was progressively updated during the course of the Examination in response to matters arising from written questions and hearing discussions. The Applicant's final version (ES Annex L: Version 6) is published as [REP7-008].

8.3.12. In FWQ1.1.21 the Applicant was asked to update the CEMP to specify minimum measures of dust mitigation during construction. At Deadline 2 the Applicant provided an updated Version 2 [REF] including proposed dust mitigation measures in tabular form (Table L4.3). The Applicant commented that the dust mitigation that will be used during the construction works is proven and has been used extensively on construction projects throughout the UK, including very large projects in urban areas [REP2-080]. The updated CEMP also responded to FWQ1.3.32 by ensuring that all relevant measures included within the ES Mitigation Summary Table [APP-059] including air quality are addressed within the CEMP. A monitoring requirement was added to Requirement 13(2) [REP2-080]. Further updates and clarifications were included in response to FWQ1.5.11

8.3.13. In SWQ2.3.4 I asked the EA and RCBC to confirm whether they were content with the contents of the updated CEMP. The EA responded that version 3 of the CEMP [REP4-005] 'is satisfactory for a project at this stage of its development'. They advised that on future iterations of the CEMP the EA recommended that Section L4.3 should be amended to encourage maximum re-use of suitable materials within the site boundary and to review current pollution prevention advice with a view to updating Table L4.5. RCBC did not raise any concerns in respect of the updated CEMP.

8.3.14. In SWQ2.6.1 I sought confirmation from the Applicant of what noise monitoring would be undertaken during construction to ensure that the threshold levels within BS5228 would not be exceeded. The Applicant clarified the approach to be taken and submitted a further update of the dDCO (Version 4, REP5-001]. Specific reference to BS5228 was included within the Requirement. A further update at Deadline 7 introduced a commitment for the Applicant to agree a methodology and programme of noise monitoring during the construction phases to secure compliance with BS5228 in Requirement 13(2)(a)(ii) [Version 6, REP7-005],

8.3.15. I am satisfied that the final version of the CEMP has addressed all of the issues raised during the Examination and provides an effective basis for securing mitigation during the construction phase(s), through Requirement 13.

8.3.16. **Requirement 18:** The Applicant was asked to consider whether the requirement to provide for a fire prevention method statement would duplicate other legislation or guidance [REF Q1.3 37]. In response, the Requirement was deleted as being an unnecessary duplication [REP2-080].

8.3.17. **Requirement 30:** The Applicant was asked to consider whether it was necessary to include a bespoke requirement relating to safety, in the light of the RR of the Health and Safety Executive [RR-011]. In response, the Applicant amended the Requirement to remove the words 'in consultation with the Health and Safety Authority' [REP2-080]. The Requirement was subsequently deleted from the dDCO as it was considered to be an unnecessary duplication of other legislation.

Contentious issues in the dDCO

8.3.18. Article 8: The submitted dDCO included the following rights under Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015:

- Part 2 Minor Operations
- Part 4 Temporary Buildings and Uses
- Part 7 Non-domestic Extensions, Alterations etc;
- Part 9 Development Relating to Roads
- Part 10 Repairs to Services;
- Part 14 Renewable Energy
- Part 15 Power Related Development
- Part 18 Miscellaneous Development

8.3.19. The purpose of the Article is explained in the Explanatory Memorandum (EM) [REP8-002] as to provide 'certainty that elements of the Town and Country Planning (General Permitted Development) Order 2015 will apply to the authorised development and further provides confirmation that any development carried out pursuant to such permitted development rights or pursuant to a planning permission granted under the Town and Country Planning Act 1990 will not breach the terms of the Order.'

8.3.20. In FWQ1.3.13 [PD-008], the Applicant was asked to explain why it was necessary to include such a wide range of permitted development rights in the dDCO). In response the Applicant commented that the principle of applying permitted development rights to NSIP DCOs has been established in other made orders including the York Potash Harbour Facilities Order 2016 and the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 [REP2-080]. It is accepted that Parts 14 and 18 of the GPDO are not relevant to this Application, and the updated dDCO was amended accordingly.

8.3.21. The York Potash Harbour Facility DCO applies Class B of Part 8 which related to permitted development for dock, pier, harbour, water transport, canal or inland navigation undertakings. This would appear to be very specific to the context of harbour development, and would not justify a wider range of permitted development powers.

8.3.22. Article 5(2) of the East Midlands Interchange Order contains the following provision: 'It does not constitute a breach of the terms of this Order, if following the coming into force of this Order, any development, or any part of that development, is carried out or used within the Order limits under planning permission granted under the 1990 Act.' However, the East Midlands DCO does not apply any specific categories of permitted development as is being sought by the Applicant in this case.

8.3.23. In the ExA's Recommendation Report for the East Midlands Interchange Order the Panel explored the relationship between permitted development and the EIA Regulations at an ISH. The Applicant confirmed that permitted development would not be actioned if it led to any significant environmental impacts. The ExA Panel concluded that 'any

permitted development should be explicitly within the parameters of authorised development, for example the maxima set out in the Parameters Plans, and not in addition'.[32] The ExA recommended a modification to make Article 5 subject to Article 4, which was concerned with limits of deviation.

8.3.24. The issue was further explored at the ISH on the dDCO held on 14 June 2018. The Applicant responded that it is unlikely that the Applicant would take full advantage of the provisions and also noted the further protective measures included in the GPDO at Article 3(10), which state that if the extent of the extension proposed constitutes EIA development, then automatically the permitted development rights are excluded. The Applicant also noted that there is a debate over whether the inclusion of PD in NSIP DCOs is necessary.

8.3.25. I have looked at other recent CCGT project DCOs (Wrexham, Eggborough, Meaford) and none contain a similar provision. The two references cited do not support the inclusion of specific reference to a wide range of permitted development rights. The Applicant also acknowledges that not all of the Classes of permitted development within the various Parts referred to in Article 8 are relevant to the Application project, but nevertheless considers that it is appropriate to refer to the various Parts for simplicity of drafting.

8.3.26. Articles 1 to 5 inclusive of Part 1 of the final dDCO [REP8-005] specify an extensive range of buildings and structures which will form part of the proposed development. It was not suggested that the lack of specific provision for the inclusion of PD rights in the dDCO would prevent or in any way inhibit the implementation of the development. In the absence of any clear and specific justification of the necessity to include the PD powers sought by the Applicant, I do not consider there is any reason to depart from the format of recent CCGT DCOs, which do not explicitly grant such rights.

8.3.27. Accordingly I recommend that if the SoS decides to make the Order, Article 8 of Part 3 of the Applicant's preferred dDCO [REP] should be modified as follows:

8.- ~~(1) Article 3 of, and Parts 2, 4, 7, 9, 10 and 15 in Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 apply as if this Order were a grant of planning permission.~~

(2) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under ~~the Town and Country Planning (General Permitted Development)~~

[32] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR050002/TR050002-001293-Examining%20Authority's%20report%20and%20recommendation%20to%20the%20Secretary%20of%20State%20for%20Transport.pdf paragraph 7.1.22

~~(England) Order 2015 or a~~ planning permission granted under the 1990 Act.

~~(3) References to the Town and Country Planning (General Permitted Development) (England) Order 2015 and the 1990 Act in sub-paragraph (2) include references to those provisions as amended or replaced by subsequent legislation.~~

8.3.28. A consequential amendment would be renumbering of the current Article 8(2) as 8(1).

8.3.29. **Requirement 4:** For reasons set out in full in my conclusions on Air Quality and HRA above, it is my view that information has not been provided to assess the likely effects associated with a stack height below 75m; therefore the DCO cannot allow for a stack height of less than 75m. In this regard, I consider that the provisions regarding stack height flexibility in Requirement 4(3) would amount to an inappropriate delegation of the SoS duties to another body, in this case the LPA and the Environment Agency. I therefore recommend that if the SoS decides to make the DCO the Applicant's preferred version of Requirement 4 as set out in the final version of the dDCO [REP8-009] should be modified by specifiying the height of the main stacks in sub-paragraph (2) (b) and the deletion of sub-paragraph (3) of Requirement 4, as follows:

8.3.30. (2)(b) ~~Subject to sub paragraph (3), h~~Height of main stacks 75 metres above existing ground level;

(3)~~If the undertaker wants to construct the main stacks at a height of less than 75m above existing ground level, the undertaker must first prepare and submit a further assessment to the relevant planning authority for approval in consultation with the Environment Agency which demonstrates that there will be no new or materially different environmental effects to those identified in the environmental statement arising from the proposed lower stack height.~~

8.3.31. A consequential amendment would be renumbering of the current Requirement 4(4) as 4(3).

8.3.32. **Requirement 29:** The signed SoCG with the EA recorded agreement that the Applicant had provided information to demonstrate that CCS readiness for an generating station of up to 1520MWe could be achieved within the redline boundary of the site, but not for the full 1700MWe of the appeal proposal. The issue is considered in detail in Section 4.17 of this Report above. To ensure that the current guidance on CCS would be complied with, the Applicant proposed a new Electrical output limitation Requirement as follows (Numbered Requirement 29 in the final dDCO) [Version 7, REP8-009] :

Requirement 29: Electrical output limitation

(1) The authorised development must not be operated to generate a net electrical output of more than 1520MWe unless and until sub-paragraph (2) has been satisfied.

(2) The authorised development must not be operated to generate a net electrical output of more than 1520MWe until the undertaker submits a scheme to demonstrate there is sufficient space within the order limits to comply with the land footprint requirement for the retrofitting of appropriate capture equipment for a generating station with a net electrical output of up to 1700MWe. The scheme shall be submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency. The scheme shall include as a minimum:

(a) information required by the form 'Environment Agency verification of CCS Readiness New Natural Gas Combined Cycle Power Station Using Post-Combustion Solvent Scrubbing' as outlined in Annex C of the DECC Guidance for a generating station with a net electrical output of more than 1520MWe and up to 1,700 MWe; and

(b) details demonstrating how the carbon capture equipment will fit into the space allocated for the plant including the submission of the engineering design details.

8.3.33. For reasons set out in Section 4.17 above, I am content that the inclusion of this requirement would satisfactorily address the issue of CCS in respect of the Proposed Development.

8.3.34. The SoCG between the Applicant and NGET confirms agreement that there is no need to include protective provisions in the DCO as the leases between the Applicant and NGET are being varied and updated to allow for the connections to be made. There are no hindrances to these leases being agreed in a suitable time frame to enable the development to proceed. These leases will cover NGET rights and any protections that they may require and as such NGET are satisfied that they do not require any additional protective provisions in the DCO.

8.4. CONCLUSIONS

8.4.1. I conclude that if the SoS decides to make the Order it should be subject to the modifications set out above, and reflected in the recommended DCO attached at Annex D.

9. SUMMARY OF FINDINGS AND CONCLUSIONS

9.1. INTRODUCTION

9.1.1. In relation to s104 of PA 2008, I conclude in summary that:

- Making the recommended DCO would be in accordance with NPSs EN-1, EN-2 and would be in accordance with the development plan (RCBC Local Plan), other relevant policy, all of which have been taken into account in this report;
- I have had regard to the LIR produced by RCBC in making this recommendation;
- In making the DCO, the SoS would be fulfilling is duties under the EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the NERC Act 2006;
- Whilst the SoS is the competent authority under the Habitats Regulations, I conclude that the proposed development would not adversely affect European Sites, species or habitats, and I have taken this into account in reaching my recommendation;
- With regard to all other matters and representations received, I have found no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- The proposed development would have no adverse effects that would outweigh its benefits; and
- There is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

9.1.2. The Application does not involve Compulsory Acquisition or Temporary Possession as the Applicant is the freeholder of all the land needed for the development and all other relevant interests in the land can be addressed through the renegotiation of leases with the relevant parties by agreement. Accordingly, s122 of PA2008 is not engaged by the Application.

9.1.3. For all of the above reasons, and in the light of my findings and conclusions on important and relevant matters set out in the report, I recommend that the Secretary for Business, Energy and Industrial Strategy makes the Tees Combined Cycle Power Plant Order in the form recommended at Appendix D to this report.

The table below lists the main events that occurred during the Examination and the procedural decisions taken by the Examining Authority (ExA)

Date	Examination Event
10 April 2018	Preliminary Meeting
10 April 2018	Issue Specific Hearing on the Scope of the Application
24 April 2018	**Deadline 1** Deadline for the receipt of: • Notification of wish to speak at a subsequent Issue Specific Hearing • Notification of wish to speak at an Open Floor Hearing • Notification of wish to attend an Accompanied Site Inspection (ASI) suggested locations and justifications • Notification by statutory parties of wish to be considered an Interested Party • Notification of wish to have future correspondence electronically • Comments on any updates to Application Documents submitted by the Applicant before or at the Preliminary Meeting (PM) • Submission by the Applicant of revised Habitats Regulation Assessment (HRA) Matrices
8 May 2018	ExA's request under Rule 17 for further information and comment on the Applicant's proposed changes to the Application
14 May 2018	• Any notification of hearings
16 May 2018	**Deadline 2** Deadline for receipt of: Comments on Relevant Representations (RRs) • Summaries of all RRs exceeding 1500 words • Written Representations (WRs) • Summaries of all WRs exceeding 1500 words

	• Local Impact Reports from any local authorities • Statements of Common Ground (SoCG) requested by the ExA • Statement of Commonality for SoCG • Responses to the ExA's Written Questions • Post hearing submissions including written submissions of oral case • Responses to any additional information requested by the ExA
29 May 2018	**Deadline 3** Deadline for receipt by the ExA of: • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to the ExA's Written Questions • Responses to any additional information requested by the ExA and the Rule 17 request
12 June 2018	Accompanied Site Inspection
13 June 2018	Issue Specific Hearing on Environmental Matters
14 June 2018	Issue Specific Hearing on the draft Development Consent Order (DCO)
04 July 2018	ExA's Procedural Decision to accept changes to the Application
06 July 2018	**Deadline 4** Deadline for receipt of: • Responses to any additional information requested by the ExA • Comments on Post hearing submissions including written submissions of oral case • Revised draft DCO from Applicant
10 July 2018	Any notifications of hearings
24 July 2018	The ExA's Further Written Questions

07 August 2018	**Deadline 5** Deadline for receipt of: • Responses to the ExA's Further Written Questions (if required) • Responses to any additional information requested by the ExA • Comments on Applicant's revised draft DCO (if required
22 August 2018	**Deadline 6** Deadline for receipt of: • Post hearing submissions including written submissions of oral case • Applicant's revised DCO • Responses to any additional information requested by ExA • Comments on responses to further Written Questions
05 September 2018	Issue of the Report on the Implications for European Sites (RIES)
26 September 2018	**Deadline 7** Deadline for receipt of: • Comments on the RIES • Responses to any additional information requested by ExA
03 October 2018	**Deadline 8** Deadline for receipt of: • Responses to comments on the RIES • Responses to additional information requested by the ExA • Final draft DCO to be submitted by the Applicant in the SI template with the SI template validation report • Resubmission of final versions of updated application documents
10 October 2018	**CLOSE OF EXAMINATION**

Tees CCPP Examination Library

Updated - 30/01/2019

This Examination Library relates to the Tees CCPP 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 will be used within the Report on the Implications for European Sites and will be 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 are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- 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 is 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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Category	**Reference**
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
Representations –by Deadline	
Deadline 1: *State what type of submissions was requested for this deadline in the heading* Includes R17 responses	REP1-xxx

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Deadline 2: *State what type of submissions was requested for this deadline in the heading* Includes R17 responses	REP2-xxx
Deadline 3: *State what type of submissions was requested for this deadline in the heading* Includes R17 responses	REP3-xxx
Deadline 4: *State what type of submissions was requested for this deadline in the heading* Includes R17 responses	REP4-xxx
Deadline 5: *State what type of submissions was requested for this deadline in the heading* Includes R17 responses	REP5-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

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Application Documents	
APP-001	Sembcorp Utilities (UK) Limited 1.1 - Application Cover Letter - Final - November 2017
APP-002	Sembcorp Utilities (UK) Limited 1.2 - Application Guide - Final - November 2017
APP-003	Sembcorp Utilities (UK) Limited 1.3 - Application Form - Final - November 2017
APP-004	Sembcorp Utilities (UK) Limited 1.4 - Notices for Statutory Publicity - Final - November 2017
APP-005	Sembcorp Utilities (UK) Limited 2.1 - Draft Development Consent Order - Final - November 2017
APP-006	Sembcorp Utilities (UK) Limited 2.2 - Explanatory Memorandum - Final - November 2017

APP-007	Sembcorp Utilities (UK) Limited 3.1 - Schedule of Land Ownership and Interests Schedule - Final - November 2017
APP-008	Sembcorp Utilities (UK) Limited 4.1 - Location Plan Key Plan - Final - November 2017
APP-009	Sembcorp Utilities (UK) Limited 4.1 - Location Plan Sheet 1 - Final - November 2017
APP-010	Sembcorp Utilities (UK) Limited 4.1 - Location Plan Sheet 2 - Final - November 2017
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APP-013	Sembcorp Utilities (UK) Limited 4.3 - Works Plan Sheet 1 - Final - November 2017
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APP-015	Sembcorp Utilities (UK) Limited 4.4 - Existing Access Plan - Final - November 2017
APP-016	Sembcorp Utilities (UK) Limited 4.5 - Indicative Generating Station Key Plan - Final - November 2017
APP-017	Sembcorp Utilities (UK) Limited 4.5 - Indicative Generating Station Sheet 1 - Final - November 2017
APP-018	Sembcorp Utilities (UK) Limited 4.5 - Indicative Generating Station Sheet 2 - Final - November 2017
APP-019	Sembcorp Utilities (UK) Limited 4.5 - Indicative Generating Station Sheet 3 - Final - November 2017
APP-020	Sembcorp Utilities (UK) Limited 4.6 - Indicative Electrical Connection Plan - Final - November 2017
APP-021	Sembcorp Utilities (UK) Limited 4.7 - Indicative Demineralised Water Connection Plan - Final - November 2017
APP-022	Sembcorp Utilities (UK) Limited 4.8 - Indicative Raw Water Connection Plan - Final - November 2017
APP-023	Sembcorp Utilities (UK) Limited 4.8 - Indicative Potable Water Connection Plan - Final - November 2017
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APP-029	Sembcorp Utilities (UK) Limited 4.11 - Indicative Landscaping Plan - Final - November 2017
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APP-031	Sembcorp Utilities (UK) Limited 4.13 - Listed Buildings and Schedued Ancient Monuments within 2km - Final - November 2017
APP-032	Sembcorp Utilities (UK) Limited 5.1 - Consultation Report - Final - November 2017
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APP-040	Sembcorp Utilities (UK) Limited 5.9 - Statutory Nuisance Statement - Final - November 2017
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APP-043	Sembcorp Utilities (UK) Limited 6.2.1 - ES Chapter 1 - Introduction - Final - November 2017
APP-044	Sembcorp Utilities (UK) Limited 6.2.2 - ES Chapter 2 - Legislation Policy and Guidance - Final - November 2017
APP-045	Sembcorp Utilities (UK) Limited 6.2.3 - ES Chapter 3 - EIA Approach - Final - November 2017
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APP-051	Sembcorp Utilities (UK) Limited 6.2.9 - ES Chapter 9 - Ecology and Nature Conservation - Final - November 2017
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APP-053	Sembcorp Utilities (UK) Limited 6.2.11 - ES Chapter 11 - Land and Visual Amenity - Final - November 2017
APP-054	Sembcorp Utilities (UK) Limited 6.2.12 - ES Chapter 12 - Cultural Heritage - Final - November 2017
APP-055	Sembcorp Utilities (UK) Limited 6.2.13 - ES Chapter 13 - Socio Economic Characteristics - Final - November 2017
APP-056	Sembcorp Utilities (UK) Limited 6.2.14 - ES Chapter 14 - Human Health - Final - November 2017
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APP-066	Sembcorp Utilities (UK) Limited 6.3.5 - ES Annex D2 - Envirocheck - Final - November 2017
APP-067	Sembcorp Utilities (UK) Limited 6.3.6 - ES Annex D3 - Site Condition Report - Final - November 2017
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APP-073	Sembcorp Utilities (UK) Limited 6.3.12 - ES Annex G1 - Effects of Air Quality - Final - November 2017
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Adequacy of Consultation Responses	
AoC-001	North York Moors National Park Authority
AoC-002	Hambleton District Council
AoC-003	Hartlepool Borough Council
AoC-004	North Yorkshire County Council
AoC-005	Redcar and Cleveland Borough Council
Relevant Representations	
RR-001	Tees Valley Combined Authority
RR-002	Ian Shallow
RR-003	South Tees Development Corporation
RR-004	Historic England
RR-005	National Grid Electricty Transmission Plc
RR-006	Environment Agency
RR-007	Natural England
RR-008	Redcar & Cleveland Borough Council
RR-009	North East Process Industry Cluster
RR-010	BNP Paribas Real Estate
RR-011	Health and Safety Executive

RR-012	Tees Valley Mayor Ben Houchen
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PD-004	Notice of Appointment of Examining Authority
PD-005	Rule 6 – Notification of the preliminary meeting
PD-006	TEES – 180502 – Rule 17 letter
PD-007	Notice ofAppointment of replacement Examining Authority
PD-008	Written Questions
PD-009	Rule 8 Letter
PD-010	Rule13 and 16 – Notification of Hearings and Site Inspection 11- 14June
PD-011	Request for further Information – Rule 17
PD-012	Second Written Questions
PD-013	Procedural decision regarding the change to the original application and cancellation of Issue Specific Hearings
PD-014	Notification of Procedural Decision Rule 17 letter and publication of RIES
PD-015	Report on the Implications for European Sites (RIES) Issued by the Examining Authority - 05 September 2018

Additional Submissions	
AS-001	SembcorpUtilities(UK)Limited EN010082-4.3-Works Plan Sheet 1-Rev 2-January 2018 - Accepted at the discretion of the Examining Authority
AS-002	SembcorpUtilities(UK)Limited EN010082-4.12-Nationally Designated Sites Within 15km-Rev 2-January 2018 - - Accepted at the discretion of the Examining Authority
AS-003	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Environment Agency Statement of Common Ground - Accepted at the discretion of the ExA
AS-004	Sembcorp Utilities (UK) Limited EN010082-4.5-Indicative Generating Station Sheet 3-Rev 2-January 2018 - Accepted at the discretion of the Examining Authority
AS-005	Sembcorp Utilities (UK) Limited EN010082-4.13-Listed Buildings and Schedued Ancient Monuments within 2km-Rev 2-January 2018 - - Accepted at the discretion of the Examining Authority
AS-006	Sembcorp Utilities (UK) Limited EN010082-6.2.11-ES_Chapter 11-Land and Visual Amenity-Rev 2 -January 2018 - Accepted at the discretion of the Examining Authority

AS-007	Sembcorp Utilities (UK) Limited Non-material change cover letter redacted
AS-008	Sembcorp Utilities (UK) Limited 8.2 - Non-Material Change - Schedule of Amended Document & Plans - Rev 1
AS-009	Sembcorp Utilities (UK) Limited 8.3 - Non-Material Change - Implication of Non-Mat Change - Final Issue
AS-010	Sembcorp Utilities (UK) Limited 6.2.7 - ES Chapter 7 - Air Quality - clean Rev 2 with figures
AS-011	Sembcorp Utilities (UK) Limited 6.2.5 - ES Chapter 5 Project Description - tracked Rev 2 with figures
AS-012	Sembcorp Utilities (UK) Limited 6.2.5 - ES Chapter 5 - Project Description - clean Rev 2 with figures
AS-013	Sembcorp Utilities (UK) Limited 6.2.11 - ES Chapter 11 LVIA - tracked Rev 3 with figures
AS-014	Sembcorp Utilities (UK) Limited 5.6 - Design & Access Statement - clean Rev 3
AS-015	Sembcorp Utilities (UK) Limited 4.5 - Indicative Generating Station Sheet 1 - Rev 2
AS-016	Sembcorp Utilities (UK) Limited 8.3 - Non-Material Change - Implication of Non-Mat Change - Final Issue
AS-017	Sembcorp Utilities (UK) Limited Design & Access Statement - clean Rev 3
AS-018	Sembcorp Utilities (UK) Limited 2.1 - Draft DCO with proposed change - clean Rev 2
AS-019	Sembcorp Utilities (UK) Limited 4.5 - Indicative Generating Station Sheet 3 - Rev 3
AS-020	Sembcorp Utilities (UK) Limited 6.2.7 - ES Chapter 7 Air Quality - tracked Rev 2 with figures
AS-021	Sembcorp Utilities (UK) Limited 6.3.19 - ES Annex K - Photomontages - Rev 2
AS-022	Sembcorp Utilities (UK) Limited 2.1 - Draft DCO with proposed change - tracked Rev 2
AS-023	Sembcorp Utilities (UK) Limited 1.2 - Application Guide - Rev 3

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AS-024	Sembcorp Utilities (UK) Limited Copy of Non-Material Change Consultation Notice
AS-025	Sembcorp Utilities (UK) Limited 6.2.11 - ES Chapter 11 - LVIA - clean Rev 3 with figures
AS-026	Sembcorp Utilities (UK) Limited Cover letter to non-material change consultation report accepted at the discretion of the Examining Authority
AS-027	Sembcorp Utilities (UK) Limited Non-material change consultation report accepted at the discretion of the Examining Authority
AS-028	Environment Agency Additional submission accepted at the ExA's discretion
AS-029	Sembcorp Utilities (UK) Limited Deadline 7 Submission Cover Letter - accepted at the discretion of the ExA
AS-030	Environment Agency Additional Submission from the Environment Agency
AS-031	National Grid A Further Response to The Applicant on behalf of National Grid - Accepted at the discretion of the Examining Authority
AS-032	Sembcorp Utilities (UK) Limited An Additional submission from the Applicant has been accepted at the discretion of the Examining Authority on Wednesday 10
AS-33	Sembcorp Utilities (UK) Limited Section 106 Agreement

Events and Hearings	
Preliminary Meeting	
EV-001	Preliminary Meeting Note
EV-002	Recording of Preliminary meeting
Accompanied Site Visits and Hearings	
EV-003	Recording of Issue Specific Hearing on the Scope of the Application–Part 1
EV-004	Recording of Issue Specific Hearing on the Scope of the Application–Part 2
EV-005	Note of Unaccompanied Site Inspection -14 March 2018
EV-006	Note of Unaccompanied Site Inspection-09 April 2018
EV-007	Accompanied Site Inspection Itinerary -12 June 2018
EV-008	Agendas for Issue Specific Hearing

	Notification by ExA of Agendas to inform the Issue Specific Hearings to be held on 13 June 2018 and 14 June 2018F
EV-009	Recording of Issue Specific Hearing on Environmental Matters part 1 Recording of Issue Specific Hearing on Environmental Matters part 1
EV-010	Recording of Issue Specific Hearing on Environmental Matters part 2 Recording of Issue Specific Hearing on Environmental Matters part 2
EV-011	Recording of Issue Specific Hearing on the draft Development Consent Order(DCO) Recording of Issue Specific Hearing on the draft Development Consent Order (DCO)
Representations	
Deadline 1 • ie) Written Representations • Responses to ExA's first written Questions • Local Impact Reports • Statements of Common Ground • Other submissions	
REP1-001	Sembcorp Utilities (UK) Limited Annex H - Habitats Regulations Assessment (HRA) - No Significant Effects Report (NSER)
REP1-002	Sembcorp Utilities(UK)Limited Covering Letter
REP1-003	The Crown Estate Late Submission for Deadline 1 accepted at the discretion of the Examining Authority
Deadline 2 • ie) Comments on Written submissions Representations • Comments on responses to ExA's 7 first written Questions 8 • Responses to comments on relevant representations • Other • Item 6 • Item • Item	
REP2-001	Sembcorp Utilities (UK) Limited Application Document Reference No.4.13 Listed building and scheduled monuments within 2km
REP2-002	Sembcorp Utilities (UK) Limited Register and Title Plan CE115855

REP2-003	Natural England Seaton Dunes & common SSSI Map
REP2-004	Sembcorp Utilities (UK) Limited Table 3.2 - The Influence of Project Phasing on the Technical Scope of the EIA
REP2-005	Sembcorp Utilities (UK) Limited Tees CCPP - Updated Mitigation Table
REP2-006	Sembcorp Utilities (UK) Limited Tees CCPP - Updated Mitigation Table
REP2-007	Sembcorp Utilities (UK) Limited Works Plan 4
REP2-008	SembcorpUtilities (UK) Limited Tees CCPP - Annex L CEMP
REP2-009	Sembcorp Utilities (UK) Limited Tees CCPP - SoCG with Natural England
REP2-010	Natural England North York Moors SPA CO
REP2-011	Natural England Cowpen Marsh Citation
REP2-012	Natural England South Gare & Coatham Sands SSSI - Citation
REP2-013	Sembcorp Utilities (UK) Limited Figure 11.4: National Character Area
REP2-014	Natural England Redcar Rocks SSSI - Citation
REP2-015	Natural England Teesmouth and Cleveland Coast SPA and Ramsar Site Designation Map
REP2-016	Sembcorp Utilities (UK) Limited SoCG with Civil Aviation Authority
REP2-017	Sembcorp Utilities (UK) Limited NWL Email on water demand
REP2-018	Natural England Lovell Hill Pools Citation

REP2-019	Health and Safety Executive Health and Safety Executive's response to Deadline 2
REP2-020	Sembcorp Utilities (UK) Limited SoCG Statement of Commonality
REP2-021	Natural England Teesmouth & Cleveland Coast Ramsar
REP2-022	Natural England Seal Sands SSSI Map
REP2-023	Natural England Pinkney And Gerrick Woods Citation
REP2-024	Natural England Tees and Hartlepool Foreshore and Wetlands SSSI 1 of 3
REP2-025	Natural England Seal Sands SSSI - Citation
REP2-026	Sembcorp Utilities (UK) Limited Works Plan 2
REP2-027	Natural England Saltburn Gill SSSI Citation
REP2-028	Sembcorp Utilities (UK) Limited Proposed Site Layout
REP2-029	Natural England North York Moors citation
REP2-030	Natural England Pinkney And Gerrick Woods Map
REP2-031	Sembcorp Utilities (UK) Limited Figure 11.3: Baseline Landscape View and Green Infrastructure
REP2-032	Environment Agency Environment Agency Written Representations Tees CCPP
REP2-033	Natural England North York Moors SSSI Map
REP2-034	Sembcorp Utilities (UK) Limited Tees CCPP - Plot redline drawing 2
REP2-035	Natural England Redcar Rocks SSSI Map

REP2-036	Sembcorp Utilities (UK) Limited Tees CCPP - Other Consent Liscences
REP2-037	Natural England Tees & Hartlepool Foreshore and Wetlands SSSI - Citation
REP2-038	Sembcorp Utilities (UK) Limited Tees CCPP - SoCG with National Grid
REP2-039	Sembcorp Utilities (UK) Limited Tees CCP - Deadline 2 Submission Cover Letter
REP2-040	Natural England Teesmouth and Cleveland Coast Ramsar Map
REP2-041	Sembcorp Utilities (UK) Limited Tees CCPP - Cable Easement Plan
REP2-042	Sembcorp Utilities (UK) Limited SoCG with Historic England
REP2-043	Sembcorp Utilities (UK) Limited Tees CCPP Adjacent Land
REP2-044	Natural England Natural England Executive Summary to Written Representations
REP2-045	Natural England Teesmouth & Cleveland Coast SPA
REP2-046	Sembcorp Utilities (UK) Limited Tees CCPP - Plot redline drawing
REP2-047	Sembcorp Utilities (UK) Limited Tees CCPP - SoCG with Tees Valley Wildlife Trust
REP2-048	Sembcorp Utilities (UK) Limited Works Plan 3
REP2-049	Sembcorp Utilities (UK) Limited Tees CCPP - Written Summary of Oral Case
REP2-050	Sembcorp Utilities (UK) Limited Register and Title Plan CE189675
REP2-051	Natural England Tees and Hartlepool Foreshore and Wetlands SSSI maps 2 & 3
REP2-052	Sembcorp Utilities (UK) Limited Tees CCPP - Annex I2-Draft Construction Traffic Management Plan

REP2-053	Natural England North York Moors SAC Map
REP2-054	Redcar and Cleveland Borough Council Response to ExA's written Questions
REP2-055	Sembcorp Utilities (UK) Limited SoCG with Highways England
REP2-056	Natural England North York Moors SAC Citation
REP2-057	Sembcorp Utilities (UK) Limited Figure 11.4: National Character Area
REP2-058	Environment Agency Environment Agency Covering Letter to Written Questions Tees CCPP
REP2-059	Sembcorp Utilities (UK) Limited Tees CCPP - SoCG with Redcar Cleveland
REP2-060	Natural England North York Moors SPA Map
REP2-061	Sembcorp Utilities (UK) Limited Tees CCPP - SoCG with Environment Agency
REP2-062	Natural England North York Moors SAC CO
REP2-063	National Grid National Grid response to Deadline 2
REP2-064	Natural England Cowpen Marsh Map
REP2-065	Redcar and Cleveland Borough Council Redcar and Cleveland Local Impact Report
REP2-066	Natural England Seaton Dunes & Common SSSI - Citation
REP2-067	Sembcorp Utilities (UK) Limited Tees CCP - Applicant's Comments on Relevant Reps
REP2-068	Natural England South Gare & Coatham Sands SSSI Map
REP2-069	Sembcorp Utilities (UK) Limited Revised Indicative Generating Station Plan

REP2-070	Sembcorp Utilities (UK) Limited Natural England letter
REP2-071	Natural England Natural England written representation - Tees CCPP
REP2-072	Natural England Saltburn Gill SSSI Map
REP2-073	Sembcorp Utilities (UK) Limited Mike Gent email on agreed methodology for noise monitoring
REP2-074	Redcar and Cleveland Borough Council Redcar and Cleveland Borough's Deadline 2 Submission
REP2-075	Sembcorp Utilities (UK) Limited Works Plan 5
REP2-076	Sembcorp Utilities (UK) Limited Works Plan 1
REP2-077	Sembcorp Utilities (UK) Limited Land Registry Title Plan
REP2-078	Natural England European Site Conservation Objectives for Teesmouth and Cleveland Coast Special Protection Area
REP2-079	Environment Agency Environment Agency Response to ExAs Written Questions
REP2-080	Sembcorp Utilities (UK) Limited Tees CCP - Applicant's Response to ExA's WQs - Deadline 2
REP2-081	Redcar and Cleveland Borough Council Updated response to ExA's written Questions - late submission to Deadline 2 at the discretion of the ExA
REP2-082	Redcar and Cleveland Borough Council Late Deadline 2 Submission Cover Letter
REP2-083	Sembcorp Utilities (UK) Limited 8.13 - Figure C.1 Water quality and Floor Risk. Deadline 2 Submission from the Applicant that was omitted from publication on 29 May 2018
REP2-084	Sembcorp Utilities (UK) Limited 2.2 Explanatory Memorandum - Revision 2 (Tracked change Version). Deadline 2 Submission from the Applicant that was omitted from publication on 29 May 2018

REP2-085	Sembcorp Utilities (UK) Limited Development Consent Order (Revision 2). Deadline 2 Submission from the Applicant that was omitted from publication on 29 May 2018
REP2-086	Sembcorp Utilities (UK) Limited Development Consent Order - Tracked changed. Deadline 2 Submission from the Applicant that was omitted fro publication on 29 May 2018
REP2-087	Sembcorp Utilities (UK) Limited 2.2 Explanatory Memorandum - Revision 2 (Clean Version). Deadline 2 Submission from the Applicant that was omitted from publication on 29 May 2018
REP2-088	Sembcorp Utilities (UK) Limited 8.9 - List of Abbreviations . Deadline 2 Submission from the Applicant that was omitted from publication on 29 May 2018
REP2-089	Sembcorp Utilities (UK) Limited 8.21 Wilton International Development Land GIS-00-L-02668. Deadline 2 Submission from the Applicant that was omitted from publication on 29 May 2018
REP2-090	Sembcorp Utilities (UK) Limited 8.8 - Figure 9.1 Designated Sites within 15 km of Site. Deadline 2 Submission from the Applicant that was omitted from publication on 29 May 2018
REP2-091	Sembcorp Utilities (UK) Limited Tees CCPP - Carbon Capture Readiness Statement
Deadline 3 • Comments on WRs and responses to comments on RRs • Comments on Local Impact Reports • Comments on responses to the • ExA's Written Questions • Responses to any additional information requested by the ExA	
REP3-001	Sembcorp Utilities (UK) Limited The Applicant's Cover Letter
REP3-002	Sembcorp Utilities (UK) Limited The Applicant's Comments on the Environment Agency's Written Representation
REP3-003	Sembcorp Utilities (UK) Limited The Applicant's Comments on the Environment Agency's Responses to the Examiner's Written Questions

REP3-004	Sembcorp Utilities (UK) Limited Applicant's Comments on Redcar and Cleveland Borough Council's Responses to the Examiner's Written Questions
REP3-005	Health and Safety Executive HSE Response to Deadline 3
REP3-006	National Grid National Grid Deadline 3 Cover Letter
REP3-007	National Grid National Grid Representations
REP3-008	Natural England Natural England Response to Deadline 3
REP3-009	Historic England Historic England Deadline 3 Submission Cover Letter
REP3-010	Historic England Historic England Response to Deadline 3
REP3-011	Public Health England Public Health England response to Deadline 3
REP3-012	Environment Agency Environment Agency's response to Deadline 3
REP3-013	Sembcorp Utilities (UK) Limited The Applicant's response to Redcar & Cleveland Borough Council's late Deadline 2 submission
Deadline 4 Deadline for receipt of: • Responses to any additional information requested by the ExA • Comments on Post hearing submissions including written submissions of oral case • Revised draft DCO from Applicant	
REP4-001	Sembcorp Utilities (UK) Limited Tees CCPP Examination – Issue Specific Hearing on Environmental Matters (13 June 2018) – follow up items on Air Quality
REP4-002	Sembcorp Utilities (UK) Limited Written Summary of Applicant's Oral Case – Issue Specific Hearing on the Draft DCO – 14 June 2018

Document Index

REP4-003	Sembcorp Utilities (UK) Limited The Tees Combined Cycle Power Plant Project Land at the Wilton International Site, Teesside Volume 2 - Annex L - Tracked
REP4-004	Sembcorp Utilities (UK) Limited Deadline 4 submission cover letter
REP4-005	Sembcorp Utilities (UK) Limited Updated Draft DCO (Version 3) - tracked changes
REP4-006	Sembcorp Utilities (UK) Limited The Tees Combined Cycle Power Plant Project Land at the Wilton International Site, Teesside Volume 2 - Annex L
REP4-007	Sembcorp Utilities (UK) Limited Development Consent Order Changes Summary
REP4-008	Sembcorp Utilities (UK) Limited Updated Draft Development Consent Order (Version 3) - clean
REP4-009	Sembcorp Utilities (UK) Limited Statement of Common Ground with Redcar and Cleveland Borough Council
REP4-010	Sembcorp Utilities (UK) Limited Detailed Habitats Regulations Assessment
REP4-011	Sembcorp Utilities (UK) Limited Written Summary of Applicant's Oral Case – Issue Specific Hearing on Environmental Matters – 13 June 2018
REP4-012	Redcar and Cleveland Borough Council Redcar and Cleveland Borough Council's response to Deadline 4
REP4-013	National Grid National Grid's response to Deadline 4
Deadline 5 • Responses to ExA's Further Written Questions • Responses to any additional information requested by ExA • Comments on Applicant's revised draft DCO	
REP5-001	Sembcorp Utilities (UK) Limited Deadline 5 Submission - Draft DCO - Tracked
REP5-002	Sembcorp Utilities (UK) Limited Deadline 5 Submission - Draft DCO - Clean
REP5-003	Sembcorp Utilities (UK) Limited Deadline 5 Submission - Cover Letter
REP5-004	Redcar and Cleveland Borough Council Deadline 5 Submission - Response from Redcar and Cleveland Borough Council

REP5-005	Sembcorp Utilities (UK) Limited Deadline 5 Submissions - Applicant's Response to ExA's Second WQS
REP5-006	Environment Agency Environment Agency's response Appendix 2 to ExA's Second Written Questions
REP5-007	Environment Agency Environment Agency Cover letter for Second Written Questions
REP5-008	Environment Agency Environment Agency's response to ExA's Second Written Questions
REP5-009	Environment Agency Environment Agency's response Appendix 1 to ExA's Second Written
REP5-010	Natural England Deadline 5 Submission - Response from Natural England
Deadline 6 • Post hearing submissions including written submissions of oral case • Applicant's revised DCO • Responses to any additional information requested by ExA • Comments on responses to further Written Questions, if required.	
REP6-001	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Draft DCO - Clean (v5).
REP6-002	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Annex L CEMP Clean v4
REP6-003	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Cover Letter
REP6-004	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Applicant's Comments on Responses to the ExA's SWQs
REP6-005	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Explanatory Memorandum - Clean (v3)
REP6-006	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Environment Agency SoCG Unsigned
REP6-007	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Explanatory Memorandum - Tracked (v3)
REP6-008	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Draft DCO - Tracked (v5).
REP6-009	Sembcorp Utilities (UK) Limited Deadline 6 Submission - Annex L CEMP Tracked v4

Deadline 7 • Comments on the RIES (if one was prepared) • Responses to any additional information requested by ExA	
REP7-001	National Grid Deadline 7 Submission
REP7-002	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Annex L CEMP - Version 5 (Tracked)
REP7-003	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Section 106 Agreement - Final Unsigned
REP7-004	Sembcorp Utilities (UK) Limited Deadline 7 Submission - HRA Addendum
REP7-005	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Draft DCO - Tracked - Version 6
REP7-006	Environment Agency Deadline 7 Submission
REP7-007	Sembcorp Utilities (UK) Limited Deadline 7 Submission - submission Imperial Report - CCR
REP7-008	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Annex L CEMP - Version 5 (Clean)
REP7-009	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Draft DCO - Clean - Version 6
REP7-010	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Applicant's Responses to the ExA's
REP7-011	Sembcorp Utilities (UK) Limited Deadline 7 Submission - AECOM Report - CCR - Issue 4
REP7-012	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Cover Letter
REP7-013	Natural England Deadline 7 Submission
REP7-014	Sembcorp Utilities (UK) Limited Deadline 7 Submission - Stack Diameter Sensitivity Study
REP7-015	Sembcorp Utilities (UK) Limited Deadline 7 Submission - CCR Memo
Deadline 8 •Responses to comments on the RIES (if one was prepared) •Responses to additional information requested by the ExA •Final draft DCO to be submitted by the Applicant in the SI template with the SI template validation report •Resubmission of final versions of updated application documents	
REP8-001	Sembcorp Utilities (UK) Limited 1.2 Application Guide (Rev 3.0)
REP8-002	Sembcorp Utilities (UK) Limited 2.2 Explanatory Memorandum (Rev. 4.0) - Part 1
REP8-003	Sembcorp Utilities (UK) Limited 8.67 Covering Letter

REP8-004	Sembcorp Utilities (UK) Limited 5.4 Other Consents and Licences Document (Version 3)
REP8-005	Sembcorp Utilities (UK) Limited 8.69 Draft Development Consent Order - Tracked Version 7
REP8-006	Sembcorp Utilities (UK) Limited 2.2 Explanatory Memorandum (Rev. 4.0) - Part 2
REP8-007	Sembcorp Utilities (UK) Limited 8.71 Explanatory Memorandum - Tracked (Version 4)
REP8-008	Sembcorp Utilities (UK) Limited 2.2 Explanatory Memorandum (Rev. 4.0) - Part 3
REP8-009	Sembcorp Utilities (UK) Limited 2.1 Draft Development Consent Order (Revision 7)
Other Documents	
OD-001	Sembcorp Utilities (UK) Limited Cover Letter for Certificates of Compliance
OD-002	Sembcorp Utilities (UK) Limited Certificate of Compliance With Section 56
OD-003	Sembcorp Utilities (UK) Limited Certificate of Compliance With Regulation 13
OD-004	TEES - Regulation 24 Transboundary Screening
OD-005	Notification regarding close of examination (s99) Notification regarding close of examination (s99)

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
AEoI	Adverse Effects on the Integrity of European Sites
AGI	Above-ground installation
AILs	Abnormal Indivisible Loads
AONB	Area of Outstanding Natural Beauty
APFP	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
APIS	Air Pollution Information System
AQMAs	Air Quality Management Areas
AQS	Air Quality Standard
ASI	Accompanied Site Inspection
AURN	Automatic Urban and Rural Network
BAT	Best Available Technique
BCA	Bilateral Connection Agreement
BEIS	(Department for) Business, Energy and Industrial Strategy
BoR	Book of Reference
BRefs	European BAT reference documents
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CCGT	Combined Cycle Gas Turbine
CCR	Carbon Capture Readiness
CCS	Carbon Capture Storage
CEA	Cumulative Effects Assessment
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
CIEEM	Chartered Institute of Ecology and Environmental Matters
CL	Critical Load
CO_2	Carbon Dioxide
CoPA	Control of Pollution Act 1974
CTMP	Construction Traffic Management Plan
D	Examination Deadline
dB	Decibel
DCLG	Department for Communities and Local Government
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
dDCO	draft Development Consent Order
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DL	Deadline (D has been also been used for DL)
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
EA1995	Environment Act 1995
EEA	European Economic Area
EIA	Environmental Impact Assessment
ELC	European Landscape Convention
ELVs	Emission Limit Values
EM	Explanatory Memorandum
EN-1	Overarching National Policy Statement for Energy
EN-2	National Policy Statement for Fossil Fuel and Electricity Generating Infrastructure
EN-4	National Policy Statement for Gas supply infrastructure and gas and oil pipelines
EN-5	National Policy Statement for Electricity networks infrastructure
EP	Environmental Permit
EP Regulations	The Environmental Permitting (England and Wales) Regulations
EPC	Engineering Procurement and Construction
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FTE	Full-Time Equivalent
FWQ	First Written Question
GLVIA	Guidelines for Landscape and Visual Impact Assessment
Habitats Directive	Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora
Habitats Regulation	The Conservation of Habitats and Species Regulations 2017
HE	Historic England
HGV	Heavy Good Vehicle
HRA	Habitat Regulations Assessment
HRSG	Heat Recovery Steam Generators
i.e.	Id Est

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
IAPI	Initial Assessment of the Principal Issues
IAQM	Institute for Air Quality Management
IEA	Institute of Environmental Assessment
IED	Industrial Emissions Directive
INCA	Industry Nature Conservation Association
IOC	Instrument of Consent
IP	Interested Party(s)
ISH	Issue Specific Hearing
KV	Kilovolts
LBCA Act	The Planning (Listed Buildings and Conservation Areas) Act
LCP	Large Combustion Plant
LDVs	Light Duty Vehicles
LIR	Local Impact Report
LNRs	Local Nature Reserves
LOAEL	Lowest Observable Adverse Effect
LoD	Limits of Deviation
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Sites
M	Metres
MW / MWe	Megawatt and Megawatt(s) electric.
NAP	Neighbourhood Action Partnership
NE	Natural England
NEPIC	North East Process Industrial Cluster
NERC	Natural Environment and Rural Communities
NGET	National Grid Electricity Transmission
NGG	National Grid Gas
NNRs	National Nature Reserves
NO_2	Nitrogen Dioxide
NOEL	No Observed Effect Level
NOx	Oxides of Nitrogen
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NSER	No Significant Effect Report
NSIP	Nationally Significant Infrastructure Project
NSRs	Noise Selective Receptors
OFH	Open Floor Hearing
PA2008	Planning Act 2008 (as amended)
PC	Process Contribution
PEC	Predicted Environmental Concentration
PM	Preliminary Meeting

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
PM_{10} / $PM_{2.5}$	Particulate Matter of the defined dimension in micrometres (µm)
PRoW	Public Right of Way
pSPA	Potential Special Protection Area
Ramsar	The Ramsar Convention on Wetlands
RCBC	Redcar and Cleveland Borough Council
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SCIs	Sites of Community Importance
SCR	Selective Catalytic Reduction
SCU	Sembcorp Utilities (UK) Ltd
SNCB	Statutory Nature Conservation Body
SNCIs	Sites of Nature Conservation Importance
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest
SWQ	Second Written Questions
TA	Transport Assessment
TCPA1990	Town and Country Planning Act 1990 (as amended)
the 2009 EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
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 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 EIA Directive	Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment
The Framework	National Planning Policy Framework 2018

APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
The Model Provisions	The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009
The Sweetman Judgment	of C-323/7 – People Over Wind, Peter Sweetman V Coillte Teoranta (2018)
The Water Framework Directive	Council Directive 2000/60/EC (as amended) A framework for Community action in the field of water policy
The Wealden Judgement	Wealden District Council v Secretary of State for Communities and Local Government [2017] EWHC 351 (Admin)
TP	Temporary Possession
TPS	Teesside Power Station
TVCA	Tees Valley Combined Authority
TVWT	Tees Valley Wildlife Trust
UDP	Unitary Development Plan
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive
WR	Written Representation

APPENDIX D: THE RECOMMENDED DCO

STATUTORY INSTRUMENTS

201 No.

INFRASTRUCTURE PLANNING

The Tees Combined Cycle Power Plant Order 201

Made - - - [ ]

Coming into force - [ ]

CONTENTS

SCHEDULES

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 as a single appointed person 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**). 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 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**c**) 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.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 140 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Tees Combined Cycle Power Plant Order 201 and comes into force on 201 .

Interpretation

2.—(1) In this Order—

"the 1980 Act" means the Highways Act 1980(**d**);

(a) 2008 c.29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c.20). Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see the Growth and Infrastructure Act 2013 (Commencement No.1 and Transitional and Saving Provisions) Order 2013 (S.I. 2013/1124) for transitional provisions.

(b) S.I. 2010/103, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendment) Regulations 2012 (S.I. 2012/635).

(c) S.I. 2009/2263. Regulation 3 was amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendment) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (S.I. 2012/787). S.I 2009/2263 was revoked by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572), but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.

(d) 1980 (c.66). Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local

"the 1990 Act" means the Town and Country Planning Act 1990(**a**);

"the 2008 Act" means the Planning Act 2008;

"authorised development" means the development and associated development described in Part 1 of Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

"building" includes any structure or erection or any part of a building, structure or erection;

"commence" means the carrying out of any material operation (as defined in section 155 of the 2008 Act) forming the relevant part of the authorised development and "commences" "commenced" and "commencement" are construed accordingly;

"environmental statement" means the documents submitted with the application and certified as the environmental statement by the Secretary of State for the purposes of this Order together with any supplementary or further environmental information submitted by the undertaker in support of the application (APP-042 to APP-046, AS-012, AS-010, APP-050 to APP-052, AS-025, APP-054 to APP-058, REP2-006, APP-060 to APP-075, REP1-001, APP-077, REP2-052, APP-079, AS-021 and REP7-008);

"existing access plan" means the plan submitted with the application and certified as the existing access plan by the Secretary of State for the purposes of this Order (APP-015);

"highway authority" has the same meaning as in the 1980 Act;

"indicative demineralised water connection plan" means the plan submitted with the application and certified as the indicative demineralised water connection plan by the Secretary of State for the purposes of this Order (APP-021);

"indicative drainage plan" means the plan submitted with the application showing the indicative drainage connection point and certified as the indicative drainage plan by the Secretary of State for the purposes of this Order (APP-026);

"indicative electrical connection plan" means the plan submitted with the application and certified as the indicative electrical connection plan by the Secretary of State for the purposes of this Order (APP-020);

"indicative gas connection plan" means the plan submitted with the application and certified as the indicative gas connection plan by the Secretary of State for the purposes of this Order (APP-024);

"indicative generating station plans" means the plans submitted with the application and certified as the indicative generating station plans by the Secretary of State for the purposes of this Order (APP-016, AS-015, APP-018 and AS-019);

"indicative landscaping plan" means the plan submitted with the application and certified as the indicative landscaping plan by the Secretary of State for the purposes of the Order (APP-029);

"indicative potable water connection and raw water connection plans" means the plans submitted with the application and certified as the indicative potable water connection plan and indicative raw water connection plan by the Secretary of State for the purposes of this Order (APP-022 and APP-023);

Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. Sections 105A-105D were inserted by regulation 4(2) of the Highways (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1062). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**a**) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force in relation to England: 6th April 2012: S.I. 2012/601). There are other amendments to the 1990 Act which are not relevant to this Order.

"ISO Conditions" means ambient temperature of 15° Celsius, relative humidity 60% and ambient pressure of 1 bar;

"land" includes land covered by water and any interest or right in, to or over land;

"land ownership and interests schedule" means the land ownership and interests schedule certified by the Secretary of State as the land ownership and interests schedule for the purposes of this Order;

"land plan" means the plan submitted with the application and certified as the land plan by the Secretary of State for the purposes of the Order (APP-012);

"maintain" includes, to such an extent that it will not give rise to any materially new or materially different environmental effects to those already assessed in the environmental statement, inspect, maintain, repair, adjust, alter, remove, refurbish, reconstruct and or improve any part but not the whole of the authorised development and "maintenance" is construed accordingly;

"Ministry of Defence" means the Defence Geographic Centre at G7 MacLeod Building, Elmwood Avenue, Feltham, Middlesex TW13 7AH United Kingdom;

"the Order land" means the land which is required for the construction and operation of the authorised development shown on the land plan and described in the land ownership and interests schedule;

"the Order limits" means the lateral limits shown on the works plan and the vertical limits set out in Article 6 and Requirement 4(2) within which the authorised development may be carried out;

"preliminary works" means operations consisting of site clearance, environmental surveys, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or installation of a site compound;

"relevant planning authority" means the local planning authority for the area in which the authorised development is situated;

"requirements" means those matters set out in Part 2 (Requirements) of Schedule 1 and requirement means any one of those requirements;

"southern boundary sound wall" means the boundary wall situated along the southern boundary of the Order land the location of which is shown on the works plan (APP-014);

"undertaker" means Sembcorp Utilities (UK) Limited (company registration number 04636301) or any person who has the benefit of this Order in accordance with article 7;

"western boundary sound wall" means the boundary wall to be situated along part of the western boundary of the Order land the location of which is shown on the works plan (APP-014); and

"works plan" means the plans submitted with the application and certified as the works plan by the Secretary of State for the purposes of this Order (AS-001and REP2-007, REP2-026, REP2-048, REP2-075 and REP2-076).

(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.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered and described in Part 1 of Schedule 1 (authorised development) and shown on the works plan.

(5) The expression "includes" is to be construed without limitation.

(6) All areas described in square metres in the land ownership and interests schedule are approximate.

(7) References to any statutory body include that body's successor bodies.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Part 2 of Schedule 1, the undertaker is granted development consent for the authorised development in Part 1 of Schedule 1 to be carried out within the Order limits.

(2) In constructing the authorised development the undertaker may construct each numbered work anywhere within the corresponding numbered area shown on the works plan up to the limits of deviation.

Power to maintain 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.

PART 3

OPERATIONS

Operation of authorised development

5.—(1) The undertaker is hereby authorised to operate and use the generating station and associated plant comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Limits of deviation

6. In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on that plan; and

(b) deviate vertically to any extent downwards as may be found necessary to construct foundations, or any underground structures.

Benefit of the Order

7.—(1) The undertaker may with the consent of the Secretary of State—

(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 in writing between the undertaker and the lessee;

except where paragraph (5) applies in which case the Secretary of State's consent is not required.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or 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) This paragraph applies where the transferee or lessee is a person who holds a licence under section 6 of the Electricity Act 1989(**a**) or section 7 of the Gas Act 1986(**b**).

(5) Where consent of the Secretary of State is not required pursuant to sub-paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in sub-paragraph (1).

(6) The notification referred to in sub-paragraph (5) must—

(a) be signed by the undertaker and the transferee or lessee;

(b) include the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(c) contain details of the powers to be transferred or granted;

(d) include details of the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;

(e) where only part of the benefit of the Order is being transferred or granted, include a plan showing the works or areas to which the transfer or grant relates; and

(f) specify the date on which the transfer will take effect (such date to be no earlier than one week from the date of issue of the notification).

Application of legislative provisions

8.—(1) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under planning permission granted under the 1990 Act.

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**c**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) 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(**d**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use

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(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), section 6(9) was amended by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27) and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

(b) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to this section that are not relevant to this Order.

(**c**) 1990 (c.43)

(**d**) 1974 (c.40)

of the authorised development which is being used in compliance with a noise management scheme approved by the relevant planning authority under requirement 19 (control of noise during operational phase); or

(ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) 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.

PART 4

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

10.—(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

11. 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 (which identifies cases in which land is or is not to be treated as operational land for the purposes of that Act).

Certification of plans etc.

12.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the environmental statement;

(b) the existing access plan;

(c) the indicative demineralised water connection plan;

(d) the indicative drainage plan;

(e) the indicative electrical connection plan;

(f) the indicative gas connection plan;

(g) the indicative generating station plans;

(h) the indicative potable water connection and raw water connection plans;

(i) the indicative landscaping plan;

(j) the land ownership and interests schedule;

(k) the land plan; and

(l) the works plan

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

13. Any difference under any provision of this Order, unless otherwise provided for, must 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 notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals etc.

14.—(1) Where an application is made to, or a request is made of the relevant planning authority, a highway authority, or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 2 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Name
Position
Date Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1
AUTHORISED DEVELOPMENT AND REQUIREMENTS

PART 1
AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising—

Work No. 1 – an electricity generating station located on land within the Wilton International site, Teesside, with a nominal net electrical output capacity of up to 1,700 MWe at ISO Conditions, comprising—

1. Work No. 1A – up to two separate generating units, with each generating unit including—

(a) gas turbine, steam turbine and electricity generator within a turbine building;

(b) heat recovery steam generator ("hrsg") in building;

(c) hrsg feed water system including deaerator, boiler water feed pumps and associated piping;

(d) condenser;

(e) main stack;

(f) transformers;

(g) auxiliary boiler and vent;

(h) condensate polisher;

(i) boiler feed pumps;

(j) auxiliary electrical modules;

(k) emission monitoring system;

(l) blow down tank;

(m) fuel gas coalescing filter;

(n) gas turbine air inlet house;

(o) fuel gas drains tank;

(p) fuel gas flow measurement system;

(q) fuel gas performance heater;

(r) hydrogen module;

(s) condensate storage tank and make-up pump;

(t) CO^2 module;

(u) battery room module; and

(v) fire suppressant module.

2. In addition to the generating units, Work No. 1 will comprise any of the following further elements of cooling infrastructure which together comprise Work No. 1B —

(a) up to two banks of hybrid cooling towers;

(b) cooling water pumps;

(c) chemical sampling and dosing plant with electrical modules; and

(d) cooling water treatment.

3. In connection with and in addition to Work Nos. 1A and 1B, Work No.1 will include—

(a) an above ground installation ("AGI");

(b) gas receiving station/pig trap system;

(c) grid and gas connection works;

(d) general and unit services main control centre container;

(e) fire-fighting and raw storage water tank and fire water retention basin;

(f) de-mineralised water storage tank;

(g) surface and foul drainage including trade effluent and foul water discharge points, oil water separator and septic tanks;

(h) connections to drainage system;

(i) connections to utility points;

(j) control building including workshop and stores;

(k) administration building;

(l) unit transformer and electricity substation connection;

(m) distribution systems, pipework and pipe runs;

(n) AGI utility rooms;

(o) telecommunications network;

(p) western boundary sound wall;

(q) southern boundary sound wall;

(r) hardstanding and hard and soft landscaping;

(s) site access; and

(t) security gatehouse, fencing and CCTV.

Work No. 2 – associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1 which will comprise any of the following further elements—

4. Work No. 2A comprising —

(a) permanent laydown area;

(b) vehicle parking;

(c) internal roadways and footpaths;

(d) lighting columns and lighting; and

(e) signage.

5. Area reserved for carbon capture, compression and storage, such area to be laid out as vehicle parking and used for the open and covered storage of construction materials and equipment during construction of any part of the authorised development, which will comprise of any of the following further elements which together comprise Work No. 2B—

(a) laydown area including contractor compounds and cabins and wheel washing facilities;

(b) vehicle parking spaces;

(c) internal roadways and footpaths;

(d) lighting columns and lighting;

(e) hardstanding;

(f) surface and foul drainage; and

(g) signage.

and to the extent that they do not form part of any such work, further associated development comprising such other ancillary buildings, structures, enclosures, plant, works or operations as are integral to and part of the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as they will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

"capture equipment" means the plant and equipment required to capture and compress the target carbon dioxide and identified as such in the current CCS proposal;

"CHP assessment" means the combined heat and power assessment contained in document APP-038, undertaken in line with the requirements of National Policy Statements NPS EN-1 and EN-2 and the Environment Agency Guidance entitled "CHP Ready Guidance for Combustion and Energy from Waste Power Plants";

"CCS" means carbon capture and storage;

"CCS proposal" means a proposal for the capture, transport and storage of the target carbon dioxide which identifies the proposed technology, transport route and storage location for the authorised development;

"the CCS site" means an area within the area cross hatched blue on the works plan and described as Work No. 2B in Part 1 of this Schedule;

"CEMP" means the draft construction environmental management plan contained in Annex L of the environmental statement (-REP7-008);

"commercial use" means the generation of electricity on a commercial basis following the completion of commissioning;

"commissioning" means the process of assuring that all systems and components of the authorised development (which are installed or installation of which 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;

"controlled waters" means controlled waters as defined in section 104 of the Water Resources Act 1991(**a**)

"current CCS proposal" means—

(a) the CCS proposal contained in document APP-039 and supported by the Tees Carbon Capture Sizing Studies [REP7-011], set out in a feasibility study and assessed in accordance with the DECC Guidance; or

(b) if a revised CCS proposal has been identified under requirement 22, the proposal which has most recently been so identified;

"Durham Tees Valley Airport" means Durham Tees Valley Airport Limited (company registration number 02020423) or any successor organisation or company who is authorised to operate Durham Tees Valley Aerodrome at Darlington, Tees Valley DL2 1LU;

"DECC Guidance" means UK Department of Energy and Climate Change (DECC) guidance entitled Carbon Capture Readiness (CCR) A guidance note for section 36 Electricity Act

(**a**) 1991 (c.57)

1989(**a**) consent applications (November 2009) or such guidance as may amend replace or add to the 2009 guidance including the Annexes;

"Environment Agency" means the non-departmental public body of that name created by section 1 of the Environment Act 1995(**b**);

"existing ground level" means not more than 16.5 metres above ordnance datum;

"the generating station" means Work No. 1 in Part 1 of this Schedule;

"operational phase" means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete, which begins on the date specified in the operational phase notice and "operational" and "operation" should be construed accordingly;

"operational phase notice" means a written notice served by the undertaker on the relevant planning authority and the Environment Agency confirming that the operational phase is about to begin or has begun, in accordance with requirement 7 in Part 2 of Schedule 1;

"part of the authorised development" means Work No. 1A, Work No. 1B, Work No. 2A or Work No.2B or any part of such Work as listed in Part 1 of this Schedule;

"phase of the authorised development" means one of the generating units described in Work No. 1 as listed in Part 1 of this Schedule and any development which is associated with or ancillary to that generating unit as described in Work No. 2 as listed in Part 1 of this Schedule, and "phase" and "phases" are construed accordingly;

"relevant highway authority" means the highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

"shut-down" means the period of time after construction works have finished on any particular day during which activities including workers changing out of work wear, workers departing the site, post-works briefings and meetings and closing and securing of the site take place;

"start-up" means the period of time prior to construction works commencing on any particular day during which activities including the arrival of construction workers, changing into work wear and pre-works briefings and meetings take place; and

"Wildlife Trust" means the Tees Valley Wildlife Trust (registered charity number 511068).

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not be commenced until a written scheme setting the proposed phasing of the authorised development has been submitted to and approved by the relevant planning authority.

(3) Notice of intention to commence each phase of the authorised development must be provided to the relevant planning authority a minimum of fourteen days before the date that phase of the authorised development is commenced.

(4) The final phase of the authorised development must not be commenced after the expiration of five years from the date of the operational phase notice served in relation to the previous phase of the authorised development.

Notice of commencement and completion of commissioning

3.—(1) Notice of the intended start of commissioning of each phase of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commissioning of each phase is started.

(**a**) 1989 (c.29)
(**b**) 1995 (c.25).

(2) Notice of the intended completion of commissioning of each phase of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within fourteen days from the date that commissioning of each phase is completed.

Detailed design

4.—(1) No phase of the authorised development may commence other than preliminary works until details of the following relating to that phase have been submitted to and approved in writing by the relevant planning authority—

(a) the siting, design, external appearance and dimensions of all buildings and structures comprising the authorised development which are to be retained following commissioning;

(b) the colour, materials and surface finishes in respect of those buildings and structures referred to in sub-paragraph (a);

(c) the permanent circulation roads, vehicle parking and hardstanding; and

(d) ground levels and heights of all permanent buildings and structures together with cross-sections through the site showing existing and proposed ground levels

(2) The details approved under sub-paragraph (1) must be in accordance with the following thresholds—

(a) Maximum number of main stacks 2;

(b) Height of main stacks 75 metres above existing ground level;

(c) Internal diameter of main stacks between 7 and 8 metres;

(d) Maximum height of turbine buildings 32 metres above existing ground level;

(e) Maximum height of heat recovery steam generator buildings 45 metres above existing ground level (including vents);

(f) Maximum height of auxiliary boiler vents 35 metres above existing ground level;

(g) Maximum height of cooling towers 25 metres above existing ground level; and

(h) Maximum height of other buildings and structures 20 metres above existing ground level.

(3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1) and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 27.

External lighting

5.—(1) No phase of the authorised development may commence other than preliminary works until a scheme (which accords with the Guidance Notes for the Reduction of Obtrusive Light GN01:2011 and which may form part of the construction environment management plan approved under requirement 13) for all external lighting to be installed during construction of that phase has been submitted to and approved by the relevant planning authority.

(2) No phase of the authorised development may be brought into operation until a scheme (which accords with the Guidance Notes for the Reduction of Obtrusive Light GN01:2011) for all permanent external lighting to be installed in relation to that phase has been submitted to and approved by the relevant planning authority.

(3) The scheme approved pursuant to subsection (1) above must be implemented as approved prior to construction and maintained thereafter and the scheme approved pursuant to subsection (2) above must be implemented as approved prior to operation and maintained thereafter.

Fencing and other means of enclosure

6.—(1) No phase of the authorised development may commence other than preliminary works until written details of all proposed permanent fences, walls or other means of enclosure relating to that phase have been submitted to and approved by the relevant planning authority.

(2) The fencing and other means of enclosure must be installed as approved.

(3) All construction sites must remain securely fenced at all times during construction of the authorised development.

(4) Any temporary fencing erected must be removed on completion of the relevant phase of the authorised development.

Notice of commencement of operation

7. Notice of the intended start of operation of each phase of the authorised development must be given to the relevant planning authority and the Environment Agency, where practicable prior to such start and in any event within fourteen days from the date operation of that phase of the authorised development starts.

Highway accesses

8.—(1) No phase of the authorised development may commence other than preliminary works until a written scheme setting out details of the following have been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority—

(a) arrangements for vehicular access to and egress from the site during the construction of the authorised development; and

(b) any permanent arrangements for vehicular access to and egress from the site (including any associated directional signage).

(2) The access to and egress from the site must be operated in accordance with the approved details during construction and operation of the authorised development.

(3) No phase of the authorised development may be brought into operation until any approved signage referred to in sub-paragraph (1) (b) above as may be required has been installed.

Temporary buildings and structures

9.—(1) No phase of the authorised development may commence other than preliminary works until a written scheme relating to that phase in accordance with sub-paragraph (2) has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include details of—

(a) the siting, design and external appearance of temporary buildings and structures to be erected and used during the period of construction; and

(b) temporary circulation roads, parking and hardstanding, laydown areas and turning facilities to be installed and used during the period of construction.

(3) The scheme under sub-paragraph (2) must be implemented as approved and thereafter adhered to throughout the construction of that phase of the authorised development.

(4) Save for temporary fencing which is subject to requirement 6 above, all temporary works relating to a particular phase of the authorised development must be removed within a period of twelve calendar months following commencement of the operation of that phase of the authorised development unless otherwise approved in writing by the relevant planning authority.

Contaminated land and groundwater

10.—(1) If, during construction of the authorised development, contaminated land or groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, is encountered in excavations of the Order land, then work in the vicinity of

that contamination must be suspended, additional investigation and assessment must be carried out, and a written scheme detailing how the contamination will be addressed must be submitted to, and after consultation with the Environment Agency, approved in writing by the relevant planning authority prior to any works resuming.

(2) Remediation must be implemented in accordance with the scheme approved pursuant to sub-paragraph (1) prior to any works resuming.

Ground nesting birds statement

11.—(1) No works in relation to any phase of the authorised development may begin between the months of March and August inclusive, until a written ground nesting birds statement, including any proposed survey and mitigation scheme that may be required (which may form part of the construction environment management plan approved under requirement 13) has been submitted to and approved in writing by the relevant planning authority in consultation with the Wildlife Trust.

(2) The ground nesting birds statement must include an implementation timetable and must be implemented as approved if any works in relation to any phase of the authorised development begin between the months of March and August inclusive.

Landscaping

12.—(1) No part of the authorised development comprised in Work No. 1 may commence other than preliminary works until a written landscaping scheme has been submitted to and approved in writing by the relevant planning authority.

(2) The landscaping scheme must be based on the indicative landscaping plan and must include details of all proposed hard and soft landscaping works, including—

(a) location, number, species, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure establishment;

(c) hard surfacing materials; and

(d) implementation timetables for all landscaping works.

(3) The landscaping scheme must be implemented as approved and any shrub or tree which is planted pursuant to the scheme which, within a period of five years after planting, dies or becomes seriously damaged or diseased, must be replaced in the first available planting season with a specimen of similar species and size as that which was originally planted.

Construction environmental management plan ("CEMP")

13.—(1) No phase of the authorised development may commence other than preliminary works until a CEMP relating to that phase, which accords with the principles set out in the draft CEMP contained in Annex L of the environmental statement has been submitted to and approved in writing by the relevant planning authority in consultation with both the Environment Agency and the relevant highway authority.

(2) The CEMP must in particular include—

(a) a code of construction practice, specifying mitigation and management measures designed to minimise the impacts of construction works, addressing—

(i) external lighting;

(ii) noise monitoring of construction activity during normal working hours to ensure compliance with BS5228 threshold levels and of construction activity outside of normal working hours to ensure compliance with BS5228 threshold levels (or other levels agreed with the relevant planning authority) using equipment which conforms with the latest version of BS EN 61672-1:203;

(iii) air quality including dust;

(iv) construction hours, subject always to sub-paragraph (e), being between 0700 and 1900 hours on weekdays and 0800 and 1800 hours on Saturdays and no construction work shall take place on Sundays or public holidays save—

(aa) where continuous periods of construction work are required, including works such as concrete pouring and works comprising non-intrusive and internal activities, such as start-up and shut-down, electrical installation, building fit-out and non-destructive testing;

(bb) for the delivery of abnormal loads, which may cause congestion on the local road network;

(cc) where works are urgently necessary in the interests of safety or health; or

(dd) during such periods and in such locations as are otherwise agreed in writing with the relevant planning authority.

All construction works which are to be undertaken outside the hours of 0700 and 1900 on weekdays and 0800 and 1800 on Saturdays must be agreed with the relevant planning authority in writing in advance, and must be carried out within the subsequently agreed times;

(b) details of the delivery to and storage of construction materials on the site;

(c) a considerate constructors scheme;

(d) a scheme for the notification of any significant construction impacts on local residents to local residents and the relevant planning authority;

(e) a scheme for impact piling, or other means of pile driving, addressing methods and duration of piling and stating the criteria according to which pile driving is chosen, which must require impact piling to be limited to the following times unless such impact piling is required because of an emergency—

(i) Monday to Friday: 0900 to 1800 hours;

(ii) Saturday: 0900to 1300 hours; and

(iii) no impact piling on Sunday or public holidays;

(f) written details of the surface water drainage systems (including means of pollution control and an assessment of the risks to, and mitigation measures designed to protect controlled waters) to be employed during the construction of that phase of the authorised development; and

(g) details of monitoring measures.

(3) All construction works must be implemented in accordance with the approved CEMP.

Waste management during construction

14.—(1) No phase of the authorised development may commence other than preliminary works until the relevant planning authority has received and approved in writing a waste management plan relating to the construction of that phase of the authorised development.

(2) The plan must incorporate the principles in and be based on the draft waste management plan contained in Annex D4 of the environmental statement and must address and include at least the following—

(a) the storage of waste materials on site;

(b) removal of waste materials from the site for recovery or disposal at appropriately licensed sites;

(c) a materials management plan;

(d) a sediment control plan; and

(e) monitoring measures.

(3) The approved waste management plan must be implemented as approved and maintained during construction of that phase of the authorised development.

Construction transport management plan

15.—(1) No phase of the authorised development may commence other than preliminary works until a construction transport management plan relating to that phase has been submitted to and approved in writing by the relevant planning authority.

(2) The plan referred to in sub-paragraph (1) must be based on the draft construction transport management plan contained in Annex I2 of the environmental statement and must address traffic movements to and from the site during construction of the authorised development, including details of—

(a) the proposed routeing, scheduling and management of abnormal indivisible loads;

(b) the proposed routeing of delivery vehicles;

(c) how the site will be accessed and egressed;

(d) the loading and unloading facilities and arrangements that will be provided and implemented;

(e) the turning facilities that will be provided; and

(f) the vehicle parking arrangements that will be implemented

(3) The approved construction transport management plan must be implemented as approved and maintained during construction of that phase of the authorised development.

(4) In this requirement "abnormal indivisible load" has the same meaning as in the Road Vehicles (Authorisation of Special Types)(General) Order 2003(**a**)

Surface water drainage – operational

16.—(1) No phase of the authorised development shall come into operation until written details of the surface water drainage system (including means of pollution control) relating to that phase have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) The surface water drainage system must be constructed in accordance with the approved details before the operation of that phase of the authorised development commences and must thereafter be managed and maintained in accordance with the approved details.

Air safety

17.—(1) No part of the authorised development comprised in Work No.1 may commence other than preliminary works until the undertaker has notified the Ministry of Defence and Durham Tees Valley Airport of—

(a) the precise location of the authorised development with grid coordinates;

(b) the proposed date of commencement of construction;

(c) the height above ground level in metres of the tallest structure; and

(d) the maximum extension height in metres of any construction equipment.

(2) Within 28 days of completion of the construction of the generating unit in either phase of the authorised development, the undertaker must notify the Ministry of Defence and Durham Tees Valley Airport of the date of such completion of construction.

Waste management during operational phase

18.—(1) The authorised development must not be brought into operation until the relevant planning authority has received and approved in writing a waste management plan for the operational phase of the authorised development which addresses and includes at least the following—

(**a**) S.I. 2003/1998

(a) the storage of waste materials on site;

(b) removal of waste materials from the site for recovery or disposal at appropriately licensed sites; and

(c) the return and/or disposal of general engineering wastes (such as spent filters and used parts).

(2) The authorised development must thereafter be operated fully in accordance with the approved waste management plan.

Control of noise during operational phase

19.—(1) The commissioning of the authorised development must not commence until a written programme for the monitoring and control of noise during the operational phase of the authorised development has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The programme submitted and approved must specify—

(a) each location from which noise is to be measured;

(b) the method of noise measurement, which must be in accordance with British Standard 4142:2014;

(c) the maximum permitted levels of noise at each monitoring location (such levels not to exceed 3 decibels above a baseline to be agreed in writing with the relevant planning authority);

(d) provision requiring the undertaker to take noise measurements as soon as possible following a request by the relevant planning authority and to submit the measurements to the relevant planning authority as soon as they are available;

(e) details relating to

(i) the rebuilding of the western boundary sound wall;

(ii) any works that may be required to any parts of the southern boundary sound wall; and

(iii) the subsequent maintenance of the western boundary sound wall and the southern boundary sound wall thereafter; and

(f) the measures to be implemented in the event that any audible acoustic tonal noise is detected from any of the locations referred to in sub-paragraph (a) in the programme approved pursuant to sub-paragraph (1), to ensure such audible acoustic tonal noise is negated.

(3) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the programme, except;

(a) in the case of an emergency,

(b) with the prior approval of the relevant planning authority, or

(c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with sub-paragraph (4).

(4) Except in the case of an emergency, the undertaker must give the relevant planning authority 24 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(5) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the programme because of an emergency—

(a) The undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—

(i) the nature of the emergency, and

(ii) why it was necessary for the level of noise to have exceeded the maximum permitted level.

(b) If the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location—

(i) the reasons for the emergency, and

(ii) how long it expects the emergency to last.

(6) The authorised development must not be commissioned until the western boundary sound wall is fully rebuilt and any necessary works to the southern boundary sound wall have been carried out in accordance with the details approved pursuant to sub-paragraph (2) (e) above.

Combined heat and power

20.—(1) The authorised development must not be brought into operation until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the relevant planning authority for its approval a report ("the CHP review") updating the CHP assessment.

(4) The CHP review submitted and approved must—

(a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and

(b) include a list of actions (if any) that the undertaker is reasonably able to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included in the approved CHP review, within the timescales specified, unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development 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, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

(8) Sub-paragraphs (1) to (7) of this requirement will cease to have effect as soon as any of the following events occurs—

(a) the generating station is supplying process or space heating to off-site users;

(b) the generating station is decommissioned;

(c) the relevant planning authority's agreement to the undertaker not taking any such action and having no current or future CHP proposals has been obtained in writing;

(d) the need to maintain space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems ceases to be included in planning policy as from time to time in force; or

(e) the need to submit a CHP review ceases to be included in national or local planning policy as from time to time in force.

CCS site

21. Until such time as the generating station is decommissioned, the undertaker must not, without the written consent of the Secretary of State—

(a) dispose of any interest in the CCS site; 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 occurrence, to prepare the CCS site for the installation and operation of the capture equipment, should it be deemed necessary to do so.

CCS monitoring report

22.—(1) The undertaker must submit a report ("CCS monitoring report") to the Secretary of State—

(a) on or before the date on which three months have passed from commencement of operation of any phase of the authorised development; and

(b) on the date falling two years after the date the first CCS monitoring report is made and every two years thereafter.

(2) Each CCS monitoring report must provide evidence that the undertaker has complied with requirement 21—

(a) in the case of the first CCS monitoring report, since this Order was made; and

(b) in the case of any subsequent report, since the making of the previous CCS monitoring report, and must explain how the undertaker expects to continue to comply with requirement 21 over the next two years.

(3) Each CCS monitoring report must state whether the undertaker considers that some or all of the technology referred to in the current CCS proposal will not work and identify any other impediment to the technical feasibility of the current CCS proposal, explaining the reasons for any such conclusion and whether such impediments could be overcome. If the undertaker considers that technical impediments could be overcome by putting forward a revised CCS proposal, this should be included in the CCS monitoring report.

(4) Each CCS 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 its current CCS proposal.

Applicability of requirements 21 and 22

23.—(1) Requirements 21 and 22 will cease to have effect as soon as any of the following events occurs—

(a) the capture equipment is installed;

(b) the generating station is decommissioned; or

(c) the Secretary of State agrees in writing that requirements 21 and 22 shall cease to have effect.

(2) Requirement 21 will cease to have effect if the requirement to hold land for the installation of capture equipment ceases to be included in law or planning policy as from time to time in force.

(3) Requirement 22 will cease to have effect if the requirement to submit a CCS monitoring report ceases to be included in law or planning policy as from time to time in force.

Decommissioning

24.—(1) Within 12 months of the generating station permanently ceasing to be used for the purposes of generating electricity, a site closure and restoration plan for the demolition and removal of the generating station must be submitted for approval by the relevant planning authority. The plan must include—

(a) details of all structures and buildings to be demolished;

(b) details of the means of removal of the materials resulting from decommissioning works;

(c) details of the phasing of the demolition and removal works;

(d) details of the restoration works to restore any parts of the Order land to a condition agreed with the relevant planning authority and the phasing of such works;

(e) a timetable in which the measures identified in the plan must be carried out; and

(f) an environment management plan for the demolition and decommissioning works addressing the relevant matters listed in requirement 13(2) (construction environment management plan).

(2) The demolition and removal of the generating station must be implemented in accordance with the approved plan.

Requirement for written approval

25. Where under any of the above 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

26.—(1) All details submitted for the approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 12.

(2) The authorised development must be carried out in accordance with the approved details subject to such non-material amendments as are approved in writing by the relevant planning authority.

Amendments to approved details

27.—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, thresholds, plans or schemes approved under this Schedule, the approved details, thresholds, plans or schemes are, subject to sub-paragraph (2), taken to include any amendments or variations that may subsequently be approved in writing by the relevant planning authority in consultation with any other consultee specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from any details, thresholds, plans or schemes approved pursuant to these requirements must be minor or immaterial and in order to obtain approval to such amendments or variations it must be demonstrated to the reasonable 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.

Accident and emergency response

28.—(1) No phase of the authorised development may commence other than preliminary works until an accident and emergency response plan for that phase has been submitted to and approved in writing by the relevant planning authority.

(2) The accident and emergency response plan must be implemented as approved prior to commencement of development and maintained during the construction and operation of the authorised development.

Electrical output limitation

29.—(1) The authorised development must not be operated to generate a net electrical output of more than 1520MWe unless and until sub-paragraph (2) has been satisfied.

(2) The authorised development must not be operated at a net electrical output of more than 1520MWe until the undertaker submits a scheme to demonstrate there is sufficient space within the Order limits to comply with the land footprint requirement for the retrofitting of appropriate capture equipment for a generating station with a net electrical output of up to 1700MWe. The scheme shall be submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency. The scheme shall include as a minimum—

(a) information required by the form "Environment Agency verification of CCS Readiness New Natural Gas Combined Cycle Power Station Using Post-Combustion Solvent Scrubbing," as outlined in Annex C of the DECC Guidance for a generating station with a net electrical output of more than 1520MWe and up to 1,700MWe; and

(b) details demonstrating how the capture equipment will fit into the space allocated for the plant including the submission of engineering design details.

SCHEDULE 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation of Schedule 2

1. In this Schedule 2—

"appeal documents" means the application and documents referred to in paragraph 4(2)(a) of this Schedule

"appeal parties" means the relevant planning authority, the requirement consultee and the undertaker and "appeal party" shall be construed accordingly;

"appointed person" means a person appointed by the Secretary of State to determine an appeal pursuant to paragraph 4(2)(c);

"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**); and

"requirement consultee" means any body 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 planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of their decision on the application within a period of 30 business days beginning with—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

(c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(**a**) 1971 c.80

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning 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—

(a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;

(b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and

(c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison to the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such further information from the undertaker as is reasonably necessary to enable it to consider the application.

(2) In the event that the relevant planning 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, then the relevant planning authority must, within 10 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 planning authority must issue the consultation to the requirement consultee within 5 business days of receipt of the application.

(4) On receipt of a consultation pursuant to sub-paragraph (3) and in the event the requirement consultee considers further information from the undertaker is reasonably necessary to enable it to consider the consultation it must, within 10 business days of receipt of the consultation, notify the relevant planning authority in writing specifying the further information required.

(5) The relevant planning authority must notify the undertaker in writing specifying any further information requested by the requirement consultee within 5 business days of receipt of such a request and in any event within 20 business days of receipt of the application.

(6) In the event that the relevant planning authority does not provide the notification or consultation as specified in sub-paragraph (2) (3) or (5) or the requirement consultee does not request any further information within 10 business days of receipt of the consultation from the relevant planning authority as specified in sub-paragraph (4) the relevant planning authority 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.

Appeals

4.—(1) The undertaker may appeal if—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by—

(i) a requirement and any document referred to in any requirement; or

(ii) any other consent, agreement or approval required under this Order,

or grants it subject to conditions;

(b) the relevant planning authority does not give notice of its decision to the undertaker within the period specified in paragraph 2(1);

(c) having received a request for further information under paragraph 3(1) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) having received any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not reasonably necessary for consideration of the application

(2) The procedure for appeals is as follows—

(a) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide;

(b) the undertaker must on the same day provide copies of the appeal documents to the relevant authority and the requirement consultee (if applicable);

(c) as soon as is practicable after receiving the appeals documents the Secretary of State must appoint a person (who may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least 10 year's experience) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;

(d) the relevant authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within ten business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person 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;

(e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted, such date to be at least 7 business days after the date the appointed person sends their notification.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person unless otherwise agreed in writing between the appointed person and the appeal parties.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations referred to in sub-paragraph (5) above must be submitted to the appointed person and made available to all appeal parties within ten business days of the date mentioned in sub-paragraph (3).

Outcome of appeals

5.—(1) On an appeal under paragraph 3, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning 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 the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is 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.

(5) Any consent, agreement or approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purpose of Part 2 of Schedule 1 (Requirements) as if it had been given by the relevant planning authority.

(6) The relevant planning 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) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the relevant planning 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.

(9) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance or any guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Sembcorp Utilities (UK) Limited, to construct, operate and maintain an electricity generating station located on land within the Wilton International site, Teesside, with a nominal net electrical output capacity of up to 1,700 MWe at ISO Conditions together with all necessary and associated development.

The Order also provides a defence in proceedings in respect of statutory nuisance.

A copy of the plans referred to in this Order and certified in accordance with article 12 may be inspected free of charge between the hours of 9am to 5pm at the offices of Redcar and Cleveland Borough Council, Redcar & Cleveland House, Kirkleatham Street, Redcar TS10 1RT.