



Department for
Business, Energy
& Industrial Strategy

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Our Ref: EN010107

10 November 2021

Dear Mr Turnbull

PLANNING ACT 2008

APPLICATION FOR THE SOUTH HUMBER BANK ENERGY CENTRE PROJECT ORDER

1 Introduction

- 1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 10 August 2021 of the Examining Authority (“the ExA”), comprising a single examining Inspector, Christopher Butler, who conducted an Examination into the application (“the Application”) submitted on 9 April 2020 by DWD on behalf of EP Waste Management Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the construction, operation and decommissioning of the South Humber Bank Energy Centre (“SHBEC”), an Energy from Waste (“EfW”) electricity generating station and associated development on land at South Humber Bank Power Station, South Marsh Road, Stallingborough, DN41 8BZ in North East Lincolnshire.
- 1.2 The Application was accepted for Examination on 4 May 2020. The Examination began on 10 November 2020 and was completed on 10 May 2021. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 10 August 2021.
- 1.3 The Order as applied for would grant development consent for an electricity generating station, fuelled by refuse derived fuels, with a gross electrical output of up to 95 megawatts (“the Proposed Development”).

1.4 The Proposed Development is located on a site that already benefits from full Planning Permission (DM/1070/18/FUL), granted by North East Lincolnshire Council (the “NELC Planning Permission”, referred to as the “SHBEC Planning Permission” in the Applicant’s documents), for an EfW electricity generating station of up to 49.9 Megawatts (MW) gross capacity and ancillary infrastructure (the “NELC Development”). Should the Order be made the Proposed Development would:

- replace the development granted under the above-mentioned NELC Planning Permission; and
- increase the gross electrical capacity of the facility from 49.9 MW to 95 MW by improving the efficiency of the proposed EfW electricity generating station; whilst not increasing the maximum fuel throughput of 753,500 tonnes per annum, nor by increasing the maximum sizes of the building dimensions granted in the NELC Planning Permission.

1.5 The key differences between the NELC Planning Permission and the Proposed Development are set out below:

- a larger air-cooled condenser, with an additional row of fans and heat exchangers;
- a greater installed cooling capacity for the generator;
- an increased transformer capacity; and
- ancillary works.

In addition to the above points, as a result of the greater efficiency of the Proposed Development when compared to the NELC Planning Permission, the Proposed Development would produce 72 tCO₂e per GWh compared to 93 tCO₂e per GWh for the NELC Planning Permission.

1.6 As applied for, the Proposed Development would comprise:

- Work No. 1 – an electricity generating station located on the Main Development Area (“MDA”), which is land sited east of the existing SHBPS, to be fuelled by Refuse Derived Fuels Fuel (‘RDF’) with a gross electrical output of up to 95 MW at International Organization for Standardization (“ISO”) conditions;
- Work No. 1A – two emissions stacks and associated emissions monitoring systems;
- Work No. 1B – administration block, including control room, workshops, stores and welfare facilities;
- Work No. 2 - electrical, gas, water, telecommunication, steam and other utility connections;
- Work No. 3 – associated development, comprising landscaping and biodiversity works, comprising soft landscaping, including planting and biodiversity mitigation and enhancement measures;
- Work No. 4 – associated development, comprising a new site access on to South Marsh Road and works to an existing access on to South Marsh Road;
- Work No. 5 – associated development, comprising temporary construction and laydown areas comprising hard standing; laydown and open storage

areas, including materials and plant storage; contractor compounds and construction staff office and welfare facilities; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities and signage.

- 1.7 No compulsory acquisition or temporary possession powers are sought by the Applicant.
- 1.8 Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website¹ is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The main features of the development proposals, as applied for, and the site are set out in section 2 of the ExA's Report. The ExA's findings are set out in sections 4 - 6 of the ExA Report, and the ExA's conclusions on the terms of the Order and the case for development consent and are set out at sections 7 and 8 respectively.

2 Summary of the ExA's Report and Recommendation

- 2.1 The ExA assessed and tested a range of issues during the Examination, which are set out in the ExA's Report under the following broad headings:
 - Introduction (Chapter 1);
 - The Proposal and the site, including its planning history (Chapter 2);
 - Legal and Policy Context: including the Planning Act 2008 and relevant National Policy Statements ("NPS"); European Law and related UK Regulations, other legal and policy provisions; specified Development Consent Orders which have been made; transboundary effects, the National Planning Policy Framework; Local Impact Reports ("LIR"); the local Development Plan (Chapter 3);
 - The main planning issues arising from the Application and during examination (Chapter 4);
 - Findings and Conclusions in relation to the Conservation of Habitats and Species Regulations 2017 Assessment ("HRA") (Chapter 5);
 - Conclusions on the case for Development Consent (Chapter 6);
 - Draft Development Consent Order and Related Matters (Chapter 7); and
 - Summary of Findings and Conclusions (Chapter 8)
- 2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 8) of the ExA's Report, the Examining Authority recommends that the Order be made in the form attached at Annex D to the report subject to *"the SoS for BEIS satisfying themselves on the following matters:*
 - *National Grid, being National Grid Electricity Transmission plc and National Grid Gas plc, and the Applicant agreeing their side agreement*

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/south-humber-bank-energy-centre/>

and protective provisions in Part 2 of Schedule 8 of the Development Consent Order; and

- *The Carbon Budget Order 2021 for the sixth carbon budget was made after the close of the examination. The SoS for BEIS may wish to consider the impact of the Carbon Dioxide (CO₂) equivalent emissions for the construction and operational phases of the Proposed Development in relation to The Carbon Budget Order 2021,”*

3 Summary of the Secretary of State’s decision

- 3.1 The Secretary of State notes that the ExA concluded that with the mitigation proposed in its recommended Development Consent Order (“rDCO”), there would be no adverse effects that would outweigh the benefits of the project. The ExA’s overall conclusion was that development consent should be granted for the Proposed Development. The Secretary of State agrees with the ExA’s conclusion.
- 3.2 The Secretary of State has decided under section 114 of the Planning Act 2008 to make, with modifications, an Order granting development consent for the proposals in the Application. The Order does not include any powers relating to compulsory acquisition or temporary possession. This letter is a statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the Planning Act 2008 and the notice and statement required by regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 EIA Regulations”).

4 Secretary of State’s consideration of the Application

- 4.1 The Secretary of State has considered the ExA’s Report and all other material considerations including further representations received after the close of the ExA’s Examination. A summary of the Secretary of State’s consideration of the ExA’s Report and the post-Examination representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER *.*.*”].
- 4.2 The Secretary of State has had regard to the Local Impact Report submitted by North East Lincolnshire Council, Local Development Plans and environmental information as defined in regulation 3 of the 2017 EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 104 of the Planning Act 2008. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.
- 4.3 The Secretary of State notes that 12 Relevant Representations were received by the ExA and have been considered fully by the Examining Authority [RR-001-RR-012]. Those making the representations were able to become involved in the Examination as Interested Parties. Relevant Representations were made by Anglian Water Services Ltd, Cadent Gas Ltd, the Environment Agency, Natural England, Humberside International Airport, Network Rail Infrastructure Limited, National Grid (National Grid Gas plc and National Grid Electricity Transmission

plc), Public Health England, Royal Mail Group, North East Lindsey Drainage Board, and the Ministry of Defence.

- 4.4 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

The principle of and need for the development

- 4.5 The Secretary of State notes that the Proposed Development is a Nationally Significant Infrastructure Project as defined in sections 14 and 15 of the Planning Act 2008 as it is an onshore generating station with a generating capacity of greater than 50 MW. The Planning Act 2008, together with the Energy National Policy Statements, set out a process for decision-makers to follow in considering applications for development consent for such projects.
- 4.6 Section 104 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where an NPS has effect, must have regard to the relevant statement and any other matters that are both important and relevant to the decision. Any decision must be taken in accordance with the relevant NPS except where doing so would: lead to a breach of the UK's international obligations; lead to the Secretary of State being in breach of any duty imposed on him by or under any enactment; be unlawful by virtue of any enactment; or where the adverse effects of a development outweigh its benefits (the last at section 104(7) of the Planning Act 2008).
- 4.7 National Policy Statements EN-1 (the Overarching National Policy Statement for Energy - "NPS EN-1") and EN-3 (the National Policy Statement for Renewable Energy Infrastructure - "NPS EN-3") set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. National Policy Statement EN-5 – "NPS EN-5" (Electricity Network Infrastructure) is also relevant in regard to the new connection to the electricity grid to enable the export of electricity from the EfW electricity generating station. NPS EN-1 sets out that the assessment of development consent applications for electricity generating infrastructure should start with a presumption in favour of granting consent unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused.
- 4.8 After having regard to the comments of the ExA that there is a strong need case for electricity generating projects as set out in NPS EN-1 and NPS EN-3, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with the high level policy in EN-1, EN-3 and EN-5. Taken together, these NPS set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant.
- 4.9 The Energy White Paper, "Powering our Net Zero Future", was published on 14 December 2020. The White Paper announced a review of the suite of energy NPS but confirmed that the current NPS were not being suspended in the meantime. The relevant energy NPS therefore remain the basis for the Secretary of State's consideration of the Application.

Draft energy National Policy Statements

- 4.10 The review of the energy NPS is currently underway and draft versions of the documents are being consulted on¹, the consultation period closes on 29 November 2021. Although the NPS are in draft form and have not been designated, the Secretary of State considers them to be relevant and important for the purpose of Section 104 of the Planning Act 2008. As such, the Secretary of State has had regard to the draft energy NPS in deciding the Application but does not consider that there is anything contained within the drafts of the relevant NPS documents that would lead him to reach a different decision on the Application.

National Planning Policy Framework - Flood Risk Assessment Updates

- 4.11 The Secretary of State notes that the National Planning Policy Framework has been revised since the end of the examination. He has reviewed the updates within the National Planning Policy Framework regarding the assessment of flood risk and notes that: the employment site which will host the station has been allocated through a sequential test, the ExA's report states [ER 4.16.31] that all forms of flood risk have been assessed, the exception tests have been carried out, mitigation measures are secured in the DCO and interested parties had no outstanding concerns about flood risk at the end of the examination. The Secretary of State, therefore, considers that the Flood Risk Assessment ("FRA") submitted with the application is still an appropriate assessment.

Combined Heat and Power ("CHP")

- 4.12 NPS EN-1, requires that any application to develop a thermal generating station under the Planning Act 2008, must include either CHP, or contain evidence that opportunities for CHP have been fully explored, where the proposal is for a generating station without CHP. The Applicant provided a report on the feasibility of operating the proposed development as a CHP plant that indicates that provision of CHP is not presently economically viable. However, it proposes to construct the development as 'CHP-Ready'. The ExA accepted that provision of CHP is not presently economically viable and considers the proposed development should be constructed as 'CHP-Ready'. The ExA considers the current wording of Requirement 35 in the Order would secure the approval and provision of a scheme of CHP that is acceptable to the local planning authority. The Secretary of State has no reason to disagree with this position.

Issues outstanding at the close of Examination

- 4.13 In light of the ExA's recommendation in section 8.2 of his report, the Secretary of State requested further information on 27 August 2021 from the Applicant and National Grid (being National Grid Electricity Transmission plc and National Grid Gas plc) in respect of confirmation regarding the protective provisions and side agreement to safeguard National Grid equipment within the SHBEC site. The Secretary of State also requested confirmation that National Grid had withdrawn its objection to the Proposed Development and from the Applicant regarding the Deed of Variation and the interests of the mortgagee, Lloyds Bank plc. Responses were requested by 10 September 2021. A response was received from National Grid on 8 September 2021 and the Applicant on 9 September

2021. Both were subsequently published on the project page of the Planning Inspectorate's National Infrastructure Planning website on 13 September 2021.

- 4.14 After considering the responses, the Secretary of State decided to issue a second request on 30 September 2021 to the Applicant and Network Rail. The Secretary of State asked the Applicant to provide a signed letter from either EP SHB Limited (the preferred option) or from EP Waste Management Limited confirming that EP SHB Limited is aware of the Application for development consent for the Proposed Development, made by EP Waste Management Limited, and submitted to the Planning Inspectorate on 9 April 2020. The Secretary of State required that the letter confirm that EP SHB Limited is aware of, and has no objections to, the impact upon the planning permission granted to it, which has been assigned the reference number DM/1070/18/FUL by NELC, should the Order be made. The Secretary of State also advised that, should the Order be made, that he had decided to make amendments to the DCO. Firstly, he had decided to add some definitions in Part 5 of Schedule 8 to the Order and requested that the Applicant and Network Rail confirm whether or not they were content with the definitions. Secondly, he had decided to make amendments to Article 5 and Requirement 38 of the Order and asked the Applicant to confirm whether or not they were content with the amendments. A response was received from Network Rail on 5 October 2021 and from the Applicant on 7 October 2021. The Applicant provided a signed letter from EP SHB Limited providing the confirmations requested and proposing drafting changes to Article 5 and Requirement 38 of the Order. Network Rail was content with the definitions subject to some further minor modifications.
- 4.15 After considering the response from the Applicant of 7 October 2021, the Secretary of State wrote to the Applicant on 8 October 2021, advising that, should the Order be made, he had decided to amend Requirement 38 to require that construction of Work No. 1 must not start until a development consent obligation pursuant to Section 106 of the Town and Country Planning Act 1990 has been secured between North East Lincolnshire Council, the undertaker, EP SHB Limited, and Lloyds Bank plc. Also, to set out consequential changes to the Order and to confirm that Article 5 would not be amended. He asked that if the Applicant had any comments, to provide these. A response was received from the Applicant on the 15 October 2021 proposing some drafting changes in relation to Requirement 38. The Applicant stated that it had sought to discuss the matters relating to Requirement 38 with NELC but that it had not been possible to do so within the time period set for a response. The Secretary of State considered the drafting changes proposed by the Applicant and decided to accept the majority of the changes proposed. The Applicant also confirmed that it was content with the Secretary of State's decision not to amend Article 5.
- 4.16 The Secretary of State received a representation on behalf of Northern Powergrid plc following the close of the examination stating that it was in discussion with the Applicant over protective provisions in relation to its apparatus located within the Proposed Development site and asking for time to continue this engagement. The Secretary of State notes that the Order contains general protective provisions for the protection of electricity undertakers but that Northern Powergrid plc did not take part in the examination and have supplied no further information. He therefore takes no further action in respect of this matter.

5 Other matters

Waste hierarchy and fuel availability

- 5.1 The NPS set out that energy from waste is a type of infrastructure that is needed. However, the NPS for Renewable Energy Infrastructure, NPS EN-3 states that an applicant for development consent must assess *“the conformity with the waste hierarchy and the effect on relevant waste plans...”*. NPS EN-3, notes that the decision-maker should be satisfied, with reference to the relevant waste strategies and plans, that the proposed waste combustion generating station is in accordance with the waste hierarchy and of an appropriate type and scale so as not to prejudice the achievement of local or national waste management targets.
- 5.2 The ExA notes [ER 4.11.21 et seq] the North East Lincolnshire Local Plan (“NELLP”) acknowledges that *“extensive movements of waste between waste planning authority areas occur, due to commercial contracts and the location of waste facilities and many types of waste require specialist treatment, and it is not viable for every local authority area to be able to manage all of the waste it generates”*. The ExA also notes [ER 4.11.23 et seq] that although the NELLP states that NELC’s draft Waste Need’s Assessment suggests no additional waste management capacity is required to meet their needs; the NELLP implicitly recognises the potential for developing new waste management capacity by setting out a series of requirements for new waste facilities, including locational criteria which prioritise existing employment land and allocated employment sites.
- 5.3 In ER 4.11.58 et seq, the ExA summarises NELC’s LIR analysis of the Proposed Development against their waste policies. NELC acknowledge that the Proposed Development promotes greater energy efficiency than the NELC Planning Permission and has *“near identical physical dimensions and appearance”*. Additionally, they acknowledge that the Proposed Development would in principle, accord with the policies within the NELLP and that it presents an opportunity to reduce the demand for waste to go to land fill. NELC also agree in their Statement of Common Ground (“SoCG”) on the need for the Proposed Development, the principle of the use and the suitability of the site. Consequently, the ExA considers that the Applicant and NELC were in agreement in regard to the need for the Proposed Development and on the volume of waste that could be processed at the facility.
- 5.4 The ExA considers the case made by the Applicant in support of the Proposed Development and notes that the Applicant’s starting position [ER 4.11.26] is that the project would be wholly in accordance with the waste hierarchy and not prejudicial to the achievement of national or local waste management targets. The ExA sets out in detail the Applicant’s consideration of waste capacities and fuel availability in the regions of Yorkshire and Humber, the East Midlands, and in England. The Applicant concludes that the amount of combustible waste likely to be available as fuel for the Proposed Development in 2023 is in excess of its capacity both regionally and nationally. The Applicant also concludes [ER 4.11.42 et seq] that the Proposed Development would meet objectives of national and local policy through: delivering the waste hierarchy by providing further R1 rated residual waste treatment; producing both power and heat; and by being

located on employment land in an area well suited to the operation of the Proposed Development.

- 5.5 The ExA sets out the key issues that were considered during the Examination in respect of the Application. It notes [ER 4.11.53 et seq] that United Kingdom Without Incineration (“UKWIN”) and two local residents raised concerns prior to the Examination commencing in their Relevant Representations about the Proposed Development. UKWIN raised concerns about the need for the development and the climate change assessments conducted by the Applicant. The two local residents raised concerns about whether the Proposed Development would burn local refuse or refuse shipped in from around the country and if the Proposed Development would promote waste production, rather than reducing and recycling waste. They also raised concerns around carbon emissions, sustainability and the community benefits of the development. However, the ExA notes that no further submissions were received from these parties, and they took no further part in the Examination.
- 5.6 Overall, the ExA concludes that no evidence was submitted to the Examination that would lead it to determine that the Proposed Development would not accord with the waste hierarchy, or that sufficient fuel, diverted from waste sources that would either go to landfill or be exported, would not be available. The ExA also gives substantial weight to the contribution that the Proposed Development would make to satisfying the need for new generation capacity as required by NPS EN-1 and NPS EN-3. The Secretary of State sees no reason to disagree with the ExA’s conclusions on this matter.

Air quality and emissions

- 5.7 The ExA points out [ER 4.12.1 et seq] that the National Policy Statements and the National Planning Policy Framework include the policy considerations that should be taken into account in determining the acceptability of proposed developments in relation to impacts on air quality. The ExA also notes that the NELLP includes policies which are relevant to the assessment of impacts of the Proposed Development, including Policy 47, which establishes the principles for the location of waste facilities within the region.
- 5.8 The Applicant assessed that during the construction of the Proposed Development, the emissions from construction activities and construction road traffic, and the impact of emissions on human health are considered to be negligible or not significant, and that construction emissions would be controlled through embedded mitigation measures in the Construction Environmental Management Plan (“CEMP”). During operation, the Applicant’s assessment identified air quality impacts on the Humber Estuary Special Area of Conservation (“SAC”), Special Protection Area (“SPA”), Ramsar site and Site of Special Scientific Interest (“SSSI”) resulting from the Proposed Development and in combination with other plans and projects in the vicinity of the Proposed Development. However, after further discussion with Natural England [ER 5.6.35 et seq] it was concluded that air quality effects on the nearby protected sites were not significant and would not result in an adverse effect on their integrity (refer to Habitats Regulations Assessment section 5.1.1 for full details).
- 5.9 The following three consultees raised issues concerning air quality:

- Natural England raised concerns about air quality impacts on the Humber Estuary SAC, SPA and Ramsar site. However as discussed in paragraph 5.8 after further discussion it was concluded that air quality effects on the nearby protected sites would not result in an adverse effect on their integrity.
- A local resident raised concerns prior to the Examination of the Proposed Development about particulate matter (“PM”) emitted by the Proposed Development and the monitoring of PM emissions. The resident stated they were not aware of a system which is capable of monitoring PM emissions. The ExA notes that despite raising these concerns, no further submissions were received from the resident during the Examination, and their concerns remained unqualified at the close of the Examination.
- NELC considered in its LIR that:
 - the Proposed Development was in accordance with the relevant air quality policies within the NELLP;
 - that the air quality impacts would be almost identical to the NELC Planning Permission;
 - its Environmental Protection Team had assessed both the Proposed Development and the NELC Planning Permission and, subject to the Requirements in the draft Development Consent Order (“dDCO”)², deemed the air quality impacts of both to be acceptable; and
 - the air quality impacts of the Proposed Development had been modelled by their team, including the cumulative impacts of other nearby developments, and that the Proposed Development would result in no significant impacts to human or ecological receptors.

5.10 During the Examination of the Application, the ExA asked questions of the Applicant about a range of air quality and emissions topics [ER 4.12.20 et seq]. The ExA notes that the SoCG between the Applicant and the Environment Agency contains agreement between the two parties on the approach taken to control emissions from the Proposed Development and agreement that the Environmental Permit, although not yet granted, contains adequate controls on operational air emissions.

5.11 The ExA notes that the Environmental Statement (“ES”) chapter on Air Quality and Emissions submitted by the Applicant relies on the Environmental Permit specific to the Proposed Development to control the maximum fuel throughput of RDF at 753,500 tpa. As the Environmental Permit is yet to be granted, the ExA felt it necessary to specify the maximum fuel throughput in the DCO, should it be made.

5.12 In its conclusion [ER 4.12.28 et seq], the ExA states that with the appropriate mitigation measures in place, such as controlling the fuel throughput and the Requirements in the DCO which specify stack height and diameter, it is satisfied that no significant adverse effects on air quality would arise from the Proposed Development. Consequently, the Proposed Development would accord with national policies with regards to air quality, air quality and emissions do not affect the planning balance, and the air quality and emission effects are a neutral

² The draft Development Consent Order is the Development Consent Order as submitted by the Applicant.

consideration. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Biodiversity and nature conservation

- 5.13 The National Policy Statements set out that energy infrastructure development should avoid significant harm to ecological interests through mitigation measures and the use of alternatives where possible. The NELLP also sets out the need for developments to avoid adverse impacts on ecological features, including specific policies concerning the South Humber Bank.
- 5.14 The Applicant [ER 4.13.11 et seq] set out in the ES that was submitted with the Application, information about a range of international and nationally designated nature conservation sites. There are no such sites within the boundaries of the Proposed Development. However, there were a number of internationally designated sites within 10 km, including the Humber Estuary SAC, SPA and Ramsar site, and numerous national and locally designated sites within 2 km, including the Humber Estuary SSSI and several Local Wildlife Sites ("LWS"). In the assessment, habitat within the boundaries of the Proposed Development was demonstrated to support low numbers of SPA/ Ramsar site birds and was therefore assumed to be functionally linked to the SPA and Ramsar site. Fields to the north and south of the Proposed Development were also considered to be functionally linked to the Humber Estuary SPA and Ramsar site due to the aggregations of wintering birds they support.
- 5.15 The Applicant's assessment identified no significant adverse effects during construction on ecological receptors from changes in air quality, noise and vibration impacts, or visual disturbance within the Humber Estuary SAC, SPA and Ramsar site. Furthermore, in the fields to the north and south of the Proposed Development that are functionally linked to the Humber Estuary SPA/ Ramsar site, the assessment considered that controls on piling activities would sufficiently mitigate noise and vibratory disturbance, and as such, no significant effects are expected to occur at this location. Following mitigation, no residual significant effects are expected to occur to any identified protected species during construction. The Applicant also anticipated no significant adverse effects on ecology features, including the identified protected sites, during the operation of the Proposed Development.
- 5.16 The Applicant's assessment predicts there would be no significant effects caused by surface water pollution, and that no residual significant effects are expected to occur to water vole. Additionally, it states that with the creation of additional species rich grassland, there would no significant residual effects on this habitat.
- 5.17 The Applicant states that the MDA contains habitats which support breeding birds, water vole and otter, and it has assumed that it would also support grass snake. However, with the implementation of mitigation during construction, no significant residual effects are expected to occur on these species. Overall, the Applicant considers that no significant residual adverse effects on habitats, as a result of the Proposed Development, are anticipated to occur.
- 5.18 The Applicant assessed possible impacts from the loss of habitat which is functionally linked to the Humber Estuary SPA/ Ramsar site and considered that with the delivery of alternative habitat and mitigation that there would be no adverse effects on the coastal and marine habitats of the Humber Estuary SAC/

SPA/ Ramsar/ SSSI sites. EP SHB Limited (a sister company of EP Waste Management Limited) and NELC entered into a Section 106 Agreement for EP SHB Limited to pay a “Habitat Contribution” with the intention for NELC to use that money for the Habitat Mitigation Site known as Cress Marsh, in accordance with the South Humber Gateway (“SHG”) Ecological Mitigation Strategy (January 2019)³. In the SoCG between the Applicant and NELC, NELC state that the contribution secured by the existing Section 106 agreement and the necessary variations should be secured prior to the granting of the DCO, and note that this is the Applicant’s intention. NELC also confirm that the proposed ecological mitigation measures, including measures contained in the SHG Ecological Mitigation Strategy, were identical to those agreed for the NELC Planning Permission and that they were in accordance with the relevant NELLP policies. Natural England also reviewed the proposed mitigation [ER 4.13.43] for the loss of functionally linked habitat and consider that the proposed approach to the mitigation is acceptable for the loss of habitat.

- 5.19 The SoCG between the Applicant and NELC [REP4-006] confirmed that the Section 106 Agreement should carry over to the Proposed Development by means of a Deed of Variation (“DoV”). The DoV was submitted to the ExA during the Examination on 23 April 2021. However, the DoV was submitted without the Mortgagee, Lloyd’s Bank plc, being bound to it. During the Examination, it emerged that this was due to the use of out-dated Land Registry information and as such, Lloyd’s Bank’s interest in the land was not identified. The Applicant explained that Lloyd’s Bank consent to be party to the DoV was sought, but was not possible to obtain during the Examination. The ExA considered [4.13.56 et seq] there could still be a small risk of the mortgagee taking possession without being bound by the Section 106 obligations and that it was justified to add an additional requirement into the DCO to require that Work No. 1 must not start until the “habitat contribution”, as defined in the Section 106 agreement, has been paid to the relevant planning authority. Subsequently, the Secretary of State requested further information from the Applicant on the 27 August 2021 regarding whether the consent of the Mortgagee had been obtained. The Applicant replied on 9 September 2021 explaining that consent had not yet been obtained but asserted that Article 5 (12) of the Applicant’s final draft DCO restricts the Applicant from commencing development until the position regarding Lloyd’s interest is resolved. Additionally, the Applicant highlighted that only the Applicant has the benefit of the DCO and any transfer of the benefit of the DCO to Lloyd’s would require the Applicant’s written agreement and the Secretary of State’s consent. There was further correspondence on this matter, as detailed at sections 4.13 to 4.15 above.
- 5.20 The Secretary of State notes the ExA’s opinion, that consent from Lloyds Bank has not yet been obtained, and the correspondence from the Applicant. The Secretary of State considers that it is necessary to require that construction of Work No. 1 must not start until a development consent obligation pursuant to Section 106 of the Town and Country Planning Act 1990 has been secured

³ The South Humber Gateway Ecological Mitigation Strategy (January 2019) is a strategy managed by NELC, and contained in Policy 9 of the NELLP, to provide strategic mitigation sites for roosting birds on the South Humber Bank. The strategy can be found at: <https://www.nelincs.gov.uk/planning-and-building-control/planning-policy/the-local-plan/local-plan-background-information/south-humber-gateway/>

between the relevant planning authority, the undertaker, EP SHB Limited, and Lloyds Bank plc (or any successor in title to the charge). This is secured in the DCO under Requirement 38. The development consent obligation must reflect the obligations secured by the original Section 106 agreement, and the Secretary of State expects this to include payment of a financial contribution to NELC which NELC will then use towards wetland habitat at Cress Marsh (the SHG mitigation site). On that basis the Secretary of State agrees with the ExA and Interested Parties that there will be no adverse effect on integrity of the SPA and Ramsar site alone or in-combination with other plans or projects due to loss of functionally linked land.

- 5.21 The ExA notes [ER 4.13.23] that during the Examination, Natural England (the Government's statutory advisers on nature conservation matters) advised that there was no fundamental reason why the Proposed Development should not be permitted. However, Natural England disputed some of the Applicant's assessment conclusions regarding noise disturbance caused by piling during construction and air quality impacts arising from NO_x concentrations and acid deposition on nearby protected sites in combination with other plans or projects during operation. These disputes were resolved after further clarifications on the methodology used for various aspects of the assessments, and the introduction of additional mitigation measures to control piling during construction of the Proposed Development. Subsequently, the Applicant submitted a SoCG with Natural England in agreement that no likely significant effects were expected to occur as a result of NO_x concentrations, acid deposition, or noise and vibratory disturbance, during construction and operation. The SoCG concludes that no other matters are outstanding. Further details of the issues raised by Natural England and how they were resolved can be found in the HRA
- 5.22 In the SoCG submitted between NELC and the Applicant, NELC confirms that, subject to securing the appropriate mitigation, the impacts to biodiversity and nature conservation of the Proposed Development would be the same as the NELC Planning Permission, and that no significant effects are expected to occur on any local designated areas. No other consultees raised concerns in regard to biodiversity or nature conservation.
- 5.23 The ExA states it is satisfied that, with the additional measures to control piling, that there would be no noise and vibratory disturbance to any biodiversity and nature conservation receptors during construction or operation of the Proposed Development. The ExA also agrees with the statement from Natural England that there would be no adverse effects from in-combination effects from NO_x or acid deposition.
- 5.24 The ExA concludes [ER 4.13.60] that it considers Natural England's concerns have been adequately dealt with by the Applicant, that the ecological, biodiversity and nature conservation issues have been adequately assessed, that the requirements of NPS EN-1 have been met, and that the ecological, biodiversity and nature conservation effects are a neutral consideration in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Landscape and visual effects

- 5.25 The ExA notes [ER 4.14.3 et seq] the NPS set out that virtually all nationally significant energy infrastructure projects will have effects on the landscape but that the aim should be to minimise any harm. Any harm should be assessed against the benefits of the projects in question.
- 5.26 The ExA sets out the Applicant's assessment of the landscape and visual effects of the Proposed Development. The Applicant used nine representative viewpoints in its assessment and predicts that eight of the nine viewpoints would experience no significant visual effects. Viewpoint 9 – Middle Drain Footpath is predicted to experience moderate adverse visual effects. The Applicant highlights that the landscape and visual impacts of the construction, operation and decommissioning of the Proposed Development are predicted to be no greater than those of the NELC Planning Permission.
- 5.27 NELC was the only consultee to raise matters concerning landscape and visual effects. In its LIR, NELC confirm that the maximum dimensions of the Proposed Development are the same as the NELC Planning Permission. The Applicant's SoCG with NELC concludes that the assessment does not identify any significant effects on landscape, and that the Proposed Development's landscape and visual effects would be the same as the NELC Planning Permission.
- 5.28 The ExA notes [ER 4.14.26] that the NELC Planning Permission is an important and relevant consideration in terms of landscape and visual amenity impacts of the Proposed Development. The ExA states that the Proposed Development would not appear unduly prominent or out of place as it would be seen in the context of the existing surrounding industrial sites. Overall, the ExA concludes that the Proposed Development is unlikely to have a significant effect on landscape or visual amenity, that it meets the requirements of NPS EN-1 and NPS EN-3, and that the landscape and visual effects are a neutral consideration in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions on this matter.

Traffic and transport

- 5.29 The ExA notes [ER 4.15.2 et seq] the policy sections of the NPSs, and other policy documents that relate to the assessment of traffic and transport.
- 5.30 The ExA notes [ER 4.15.10 et seq] that the Applicant submitted an assessment of potential traffic impacts arising from the Proposed Development as part of the ES that accompanied its Application for development consent. Overall, the Applicant's assessment concludes that no significant effects are expected to occur in any of the traffic impact categories assessed, during the construction, operation, and decommissioning phases of the Proposed Development. In its LIR, NELC state that the proposed traffic levels generated are almost identical to that previously deemed acceptable within the NELC Planning Permission. NELC also raised no objection to traffic levels, safety, capacity or the proposed HGV route.
- 5.31 During consultation, Network Rail Infrastructure Limited ("Network Rail") objected to the Proposed Development due to concerns related to the designated route providing HGV access to the site and the fact it traversed the Kiln Lane level crossing. Following amendments to the dDCO to resolve the issues, the objection by Network Rail was withdrawn. Royal Mail also expressed concerns related to potential road disruption and closures which could affect its operations.

However, the SoCG with Royal Mail confirmed that their concerns had been successfully resolved. Highways England had no objections to the Proposed Development. No other consultees referred to traffic and transport issues in their responses and the ExA was satisfied at the close of Examination that there were no issues outstanding between Network Rail and the Applicant.

5.32 The ExA's overall conclusion [ER 4.15.44 et seq] is that the transport assessment submitted by the Applicant meets the requirements of NPS EN-1 and that with the inclusion of a Requirement specifying the maximum fuel throughput of the Proposed Development, the ExA is satisfied that no significant traffic or transportation effects are likely to arise from the Proposed Development either alone or in-combination with other developments. Subsequently, the ExA states the traffic and transportation effects are a neutral consideration in the planning balance. The Secretary of State has no reason to disagree with the conclusions of the ExA on this matter.

Water quality, flood risk and flood resilience

5.33 The NPS and the National Planning Policy Framework set out policy considerations that should be taken into account by developers and decision-makers in relation to flood risks to and arising from nationally significant energy infrastructure projects and in relation to potential impacts on water courses and other resources.

5.34 The ExA [ER 4.16.26 et seq] notes that although the Proposed Development would be located into the high flood zone area (Flood Zone 3A), the site benefits from the presence of tidal defences along the south bank of the Humber Estuary. The FRA concludes that with appropriate mitigation the Proposed Development will be safe for its lifetime, taking into account climate change, and would not increase flood risk elsewhere.

5.35 In its LIR, NELC confirm that the Proposed Development is located on an allocated site within the NELLP and that it complies with the relevant flood risk policies in the NELLP and within the NPPF. NELC also confirm that the Proposed Development submission was supported by a Site Specific FRA which ensures that suitable flood mitigation would be incorporated into construction methods and materials.

5.36 The Environment Agency confirms that it has no objection to the Proposed Development and that all the issues regarding flood risk mitigation, groundwater protection and land contamination have been agreed between it and the Applicant. North East Lindsey Drainage Board⁴ and Anglian Water Services Limited⁵ also raised no objections. No other concerns were raised by consultees in respect of Water Quality, Flood Risk and Flood Resilience or the assessments carried out by the Applicant in relation to it. Similarly, no concerns were identified in relation to hydrogeology or ground conditions.

5.37 In the SoCG between the Applicant and the Environment Agency, the Environment Agency agreed that the applicable Requirements in the dDCO

⁴ North East Lindsey Drainage Board is a public body whose primary role is to manage water levels and reduce the risk from flooding within their district.

⁵ Anglian Water Services Limited is the supplier of water and water recycling services to customers in the east of England from the Humber Estuary to Thames Estuary, and Hartlepool.

would ensure that the identified mitigation measures are applied and would prevent impacts on surface water and groundwater, and control the water quality and flood risk effects related to construction. NELC also agreed that there would be no unacceptable impacts regarding water resources, flood risk and drainage.

- 5.38 The ExA concludes [ER 4.16.66 et seq] that for flood risk, the Proposed Development would have no significant environmental effects in terms of water quality or flood risk and would be flood resilient over its lifetime and would comply with the relevant policies in the National Policy Statements, the National Planning Policy Framework and local development plan policies. The ExA's overall conclusion is that the Proposed Development would comply with all relevant legislation and policy requirements, that the WFD, and water quality, flood risk and flood resilience effects are a neutral consideration in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Noise and vibration

- 5.39 The ExA notes [ER 4.17.2 et seq] that the NPS and the National Planning Policy Framework set out relevant matters for the assessment and consideration of noise and vibration impacts. The ExA also notes that Policy 5 of the NELLP outlines the generic considerations that are applied when considering all development proposals.
- 5.40 The ExA notes that the Applicant predicts that, with the proposed mitigation, there would be no significant noise effects during construction or operation of the Proposed Development (including from increases in levels of traffic associated with it). In its LIR, NELC confirms there are no residential receptors within 500 m of the Proposed Development and that the noise effects of the Proposed Development would be similar to that of the NELC Planning Permission. No other consultees raised any issues related to noise and vibration effects. Overall, NELC are content with the proposed mitigation and that the Proposed Development is in accordance with the policies concerning noise and vibration effects within the NELLP.
- 5.41 The ExA notes [ER 4.17.41 et seq] the importance of the NELC Planning Permission in the consideration of the DCO and notes the similarity between the Proposed Development and the NELC Planning Permission. In the absence of the Environmental Permit, the ExA emphasises the need to restrict the fuel throughput by means of Requirement in the DCO to ensure that the noise and vibration levels would not increase as a result of increased fuel deliveries⁶.
- 5.42 Subject to the implementation of the proposed mitigation and relevant Requirements in the dDCO, the ExA considers that the Applicant has adequately assessed the impact of noise and vibration arising from the construction, operation and decommissioning of the Proposed Development on residential noise sensitive receptors, and that the Application meets the requirements of NPS EN-1. Subsequently, the ExA considers the noise and vibration effects are a neutral consideration in the planning balance. The Secretary of State sees no

⁶ The ExA has included the maximum fuel throughput in the ExA's recommended Development Consent Order ("rDCO").

reason to disagree with the ExA's conclusions in this matter and agrees the need to restrict the fuel throughput by means of a Requirement in the DCO.

Ground conditions and contamination

- 5.43 The ExA notes [ER 4.18.2 et seq] that the NPS and National Planning Policy Framework set out relevant matters for the assessment and consideration of ground conditions and contamination impacts from nationally significant energy infrastructure.
- 5.44 The ExA sets out [ER 4.18.8 et seq] the Applicant's case that, with the relevant mitigation and impact avoidance measures, no residual significant effects relating to ground conditions and contamination were identified in the Applicant's assessment. The ExA found no evidence that would lead it to conclude that the assessment was incorrect.
- 5.45 NELC and the Environment Agency confirmed they had no objection to the Proposed Development and were satisfied with all matters relating to contamination and ground water protection. No other concerns were raised by consultees in respect of ground conditions or contamination.
- 5.46 The ExA concludes [ER 4.18.32] that the Proposed Development is in accordance with all relevant legislation and policy, that ground condition matters would be provided for and secured in the DCO, and that matters relating to ground conditions and contamination are thus a neutral consideration in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions on this matter.

Cultural Heritage

- 5.47 The NPS and the National Planning Policy Framework set out the policy considerations that should be taken into account in determining the acceptability of proposed developments in relation to archaeological and cultural heritage.
- 5.48 In its assessment, the Applicant states [ER 4.19.10] that there will be no physical impact upon any designated heritage assets during construction and there will be no effect on buried archaeology, due to the fact that the site has been extensively worked during previous development of the site. The ExA notes [ER 4.19.13] that there would be some non-significant adverse effects to two listed properties due to the introduction of new structures.
- 5.49 In the SoCG between the Applicant and Historic England, Historic England agree that the cultural heritage assessment is suitable and that the impacts identified in the assessment would be limited to non-significant effects. NELC state that it does not believe the Proposed Development would be detrimental to the assets identified within the assessment or that it would have any impact on archaeological assets due to previous development on the site.
- 5.50 The ExA notes [ExA 4.19.10] that the SHBPS site benefits from the existing NELC Planning Permission and considers, due to the similarity of layout and design within the Proposed Development, this to be an important and relevant consideration in terms of the cultural heritage impacts. The ExA concludes the assessment is adequate and that the Proposed Development would not adversely affect any of the non-designated assets or the majority of the designated assets identified within the assessment. Overall, the ExA concludes

[ER 4.19.31] that the less than substantial harm caused by the Proposed Development to the two affected listed buildings, is clearly outweighed by the public benefits it would provide.

- 5.51 The Secretary of State notes that the Infrastructure Planning (Decisions) Regulations 2010 sets out the desirability of preserving listed buildings or scheduled monuments or their setting. Subsequently, the Secretary of State must be satisfied that any harm caused to these assets is outweighed by the benefits of the Proposed Development. The Secretary of State must also agree that there is a clear and convincing justification for any harm that would result, both individually and collectively, upon designated heritage assets, and that overall, historic environment matters would accord with NPSs EN-1 and EN-3 and do not weigh significantly against the Order being made. The Secretary of State notes the responses to the assessment from Historic England and NELC and is content that the position outlined above meets the requirements of the regulations and that impacts on archaeology and cultural heritage have been minimised to an acceptable level. He sees no reason, therefore, to disagree with the ExA's conclusions.

Waste management

- 5.52 The ExA notes [ER 4.20.2 et seq] the policy sections of the NPSs, and other policy documents that relate to the assessment of waste management.
- 5.53 The ExA's report sets out the Applicant's case for the waste management assessment, the assessment covers construction and operational phases, but the decommissioning and demolition phases have been scoped out of the waste management assessment due to the uncertainties of future waste policy and demolition methodology.
- 5.54 When considering the waste produced during construction of the Proposed Development, the Applicant states that a large proportion of the construction waste produced would be recycled and that measures such as the production of a CEMP would be adopted to reduce the quantity of waste produced. The Applicant notes that the amounts of operational waste and the worst-case scenarios it has assessed are identical to those of the NELC Planning Permission and that it considers the Proposed Development would not generate any significant additional waste beyond that predicted to be generated by the NELC Planning Permission.
- 5.55 The Environment Agency states that it found the CEMP satisfactory and is content it is adequately secured by the relevant Requirement in the DCO. The Environment Agency was also satisfied that all aspects of waste management and pollution prevention have been adequately addressed. A local resident raised a concern in a Relevant Representation that the Proposed Development would promote waste production rather than reducing and recycling. However, no further comments were received from the resident and, in the absence of further evidence to support the concern, the ExA afforded it limited weight in its consideration of the DCO Application. No other concerns were raised by consultees in respect of waste management or the assessments carried out by the Applicant in relation to it.
- 5.56 The ExA states that it is satisfied that the Proposed Development would not generate significantly more waste than the NELC Planning Permission, and that

the Applicant's approach to waste management generally, is acceptable. The ExA concludes that it is satisfied that the Proposed Development would not result in any significant effects arising from waste generated during its construction or operation, and that the proposed mitigation can be adequately secured through the applicable Requirements in the rDCO. The ExA is content that the Proposed Development would meet all legislative and policy requirements relating to waste management. As such, the ExA concludes waste management effects to be a neutral consideration in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Socio economic effects (including human health)

- 5.57 The ExA notes [ER 4.21.1 et seq] the policy sections of the NPSs that relate to the assessment of relevant socio-economic impacts, the effects on human health and the effects of Electromagnetic Fields.
- 5.58 The ExA's report [ER 4.21.5 et seq] sets out the Applicant's assessment of socio-economic effects which states the Proposed Development would create approximately 730 jobs during the peak of construction, and approximately 55 jobs during operation. In a worst scenario basis, approximately 365 of these construction jobs and 48 operational jobs would be from the Grimsby Travel To Work Area (TTWA). Overall, the direct, indirect and induced employment would amount to a moderate beneficial long-term (classified as significant) effect on the Grimsby TTWA economy.
- 5.59 The Applicant's Human Health Assessment concludes that, following impact avoidance and mitigation secured through requirements in the dDCO, there would be no significant effects during the construction, operation or decommissioning of the Proposed Development. The assessment also concludes that there is no potential for significant electromagnetic field effects for the general public, and with the specified health and safety measures in place, no significant health effects in the medium to long-term for construction workers or operational staff are predicted.
- 5.60 The ExA states [ER 4.21.23 et seq] it is satisfied with the socio-economic effects assessments and highlights that no significant matters of concern were raised by consultees in respect of human health matters and Public Health England acknowledged that the ES has not identified any issues which could significantly affect public health. The ExA notes that the Proposed Development would support economic development in the area and would accord with all relevant policy, including NPS EN-1. It states that this weighs modestly in favour of the Proposed Development, and as such is a substantial consideration in the planning balance. The ExA also notes the importance of considering the NELC Planning Permission when weighing up the socio-economics impacts (including Human Health) that may arise from the Proposed Development. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

Other considerations

Climate change

- 5.61 The ExA notes the numerous policy and legislative provisions that address the need to reduce emissions of greenhouse gases.

- 5.62 The ExA's Report sets out the Applicant's assessment of greenhouse gas ("GHG") emissions, and the subsequent impact on climate change [ER 4.22.20]. The Applicant has also assessed the resilience of the Proposed Development to climate change. The assessment concludes that the GHG emissions from the construction of the Proposed Development would result in a minor adverse (not significant) effect when compared to the carbon budget for the period. The emissions from the construction period of the Proposed Development are mostly a result of the embodied carbon within the construction materials used. The assessment of the operational GHG emissions concludes that the emissions from the operation of the Proposed Development would be partly offset by emissions savings achieved by diverting waste from landfill, and by recycling of metals in bottom ash. Additionally, it concludes that, although the fuel throughput is the same, overall, the estimated carbon intensity of the Proposed Development of 72 tCO_{2e} per GWh is lower than the carbon intensity of the NELC Planning Permission of 93 tCO_{2e} per GWh and compares favourably to the current grid average of 173 tCO_{2e} per GWh. This is a result of the higher increased operational efficiency of the Proposed Development over the NELC Planning Permission.
- 5.63 Two responses were received from consultees prior to the Examination commencing which raised concerns related to climate change. These were received as Relevant Representations from the organisation United Kingdom Without Incineration Network ("UKWIN") and from a local resident. In its response, UKWIN states climate impacts as a concern and suggests that the Proposed Development would impede efforts to decarbonise the energy supply and disputed the methodologies and assumptions made in the climate change assessments and in detailing the need for the development. The response from a local resident expressed general concerns in relation to the carbon emissions, sustainability and community benefits of the Proposed Development. However, no subsequent submissions were received during the Examination from either consultee, and the ExA states that at the end of the Examination the concerns and allegations of UKWIN remained unsubstantiated.
- 5.64 The ExA's report states [ER 4.22.24 et seq] that the NELC Planning Permission is an important consideration in terms of climate change considerations that arise from the Proposed Development as, in addition to the lower tCO_{2e} per GWh value of the Proposed Development, the ExA notes that both the NELC Planning Permission and the Proposed Development would have similar impacts in terms of emissions from construction. The ExA also notes that NPS EN-1 explicitly recognises the Government's commitment to increasing the use of renewable energy and investment in low carbon energy generation to ensure a secure electricity market in the future. Furthermore, the ExA notes that the NPS EN-1 states that the CO₂ emissions of individual applications do not need to be benchmarked against UK carbon budgets, and CO₂ emissions are not a reason to prevent project consent.
- 5.65 The ExA notes that GHG emissions from the construction of the Proposed Development would be considerably less than 1% of the total UK carbon budget emissions during any five-year carbon period under which they arise, and as such would result in a minor adverse effect. Overall, the ExA considers that construction of the Proposed Development will not have a significant impact on the UK meeting the current carbon budget targets.

- 5.66 With regard to operational GHG emissions, the ExA notes the improved efficiency of the Proposed Development over the NELC Planning Permission and also emphasises the importance of limiting the fuel throughput by means of a Requirement in the DCO, to ensure that the Applicant's stated efficiency is delivered.
- 5.67 The ExA concludes that the Proposed Development would support the UK's transition to low carbon energy generation and states that although it would result in a small increase in emissions, it would not be significant. The ExA is satisfied that the Proposed Development would accord with NPS EN-1, NPS EN-3, the UK's commitments under the Climate Change Act 2008 and the Paris Agreement. Subsequently, the ExA states that climate change effects are a neutral consideration in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions on this matter.
- 5.68 The ExA advised that the Secretary of State considers the impact of the Carbon Dioxide (CO₂) equivalent emissions for the construction and operational phases of the Proposed Development in relation to The Carbon Budget Order 2021, see paragraph 8.8 below for the Secretary of State's consideration of this matter.

Cumulative and combined effects

- 5.69 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and NPS EN-1 require that developments such as the Proposed Development, take into account any long term and cumulative adverse impacts and to provide detail of how the effects of the Proposed Development could combine and interact with the effects of other development.
- 5.70 In its assessment of combined and cumulative effects, the Applicant concludes that no significant combined or cumulative effects are expected to occur during the construction or operation of the Proposed Development for the majority of aspects considered. The assessment identified potential air quality impacts on the Humber Estuary SPA, Ramsar site and SAC arising from NO_x emissions, nutrient nitrogen deposition, acid deposition and sulphur dioxide emissions resulting from the Proposed Development in combination with other plans and projects during operation. However, after further discussion with Natural England, it was established that the potential changes in air quality would not result in significant adverse effects, full details of this are provided in paragraph 5.8 of this document and in the Habitats Regulations Assessment section 5.1.1.
- 5.71 The ExA concluded [ER 4.22.39 et seq] that it was satisfied that that no long term and cumulative adverse impacts were likely to arise from construction, operation and decommissioning activities for the Proposed Development and as such was satisfied that the requirements of NPS EN-1 are met in this regard. Subsequently, the ExA concluded that Cumulative and Combined Effects are a neutral consideration in the planning balance. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

6 Findings and conclusions in relation to Habitats Regulations Assessment

- 6.1 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether the proposed Development would be likely, either alone or in combination with other plans and

projects, to have a significant effect on a European site as defined in the Habitats Regulations (collectively referred to in this document as a “protected site”). If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations . The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a protected site. This process is known as a Habitats Regulations Assessment.

- 6.2** The preparation of the Habitats Regulations Assessment (“HRA”) that is published alongside this decision letter was prepared by environmental specialists in BEIS. The HRA concludes that a likely significant effect cannot be ruled out in respect of three protected sites when considered alone or in-combination with other plans or projects [ER 5.4.8]: the Humber Estuary SAC, SPA and Ramsar site. It was, then, necessary to consider whether the proposed development, either alone or in-combination, would have an adverse effect on the integrity of those sites. An Appropriate Assessment was, therefore, undertaken by the Secretary of State to determine whether an adverse effect on the protected sites could be ruled out in light of the sites’ conservation objectives.
- 6.3** A number of the Applicant’s conclusions in relation to impacts on the protected sites and their features were disputed by Natural England. Natural England stated that although there was no fundamental reason of principle why the proposed development should not be permitted, it was of the view that the Applicant had provided insufficient evidence to conclude that there would be no adverse effects on integrity (“AEol”) of the protected sites. This was specifically in relation to noise and vibratory disturbance to SPA/Ramsar site birds using the SPA, Ramsar site and functionally linked land during construction and operation, and air quality impacts on all three protected sites during operation. The Applicant provided Natural England with further information to support its conclusion of no AEol, including clarifications on the air quality impact assessment, the availability of habitat with the SPA/Ramsar site undisturbed by noise impacts, and a commitment to controls on piling activity. Natural England then confirmed their agreement that there would be no AEol on the protected sites.
- 6.4** The overall conclusion of the assessment is that there would be no AEol on any protected sites, either alone or in-combination with other plans or projects. This conclusion of no AEol of the protected sites is based on the implementation of the proposed mitigation measures, including but not limited to the implementation of Continuous Flight Auger piling and/or seasonal constraints on drop hammer piling, the expected a financial contribution towards the SHG Ecological Mitigation Strategy, installation of visual screening during preliminary works, and preparation of a Construction Environmental Management Plan (“CEMP”). The Secretary of State does not, therefore, consider that there would be any breach of his duty under the Habitats Regulations in the event he was to grant development consent for South Humber Bank Energy Centre.
- 6.5** The Secretary of State notes that the ExA also concluded that the proposed development, subject to the inclusion of controls set out in the Recommended DCO and the final agreement as provided from Natural England, would not have any AEol on any protected sites. The Secretary of State finds no reason to disagree with the ExA’s conclusion on this matter.

7 The Secretary of State's consideration of the planning balance

- 7.1 All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of the proposed development, most of the potential adverse impacts have been assessed by the ExA as being not significant. The adverse impacts for the proposed development did not outweigh the significant weight attaching to the need case established by the National Policy Statements.
- 7.2 Section 104 of the Planning Act 2008 set out the procedures to be followed by the Secretary of State in determining applications for development consent where National Policy Statements have effect. The Secretary of State has to have regard to a range of policy considerations including the relevant National Policy Statements and development plans and local impact reports prepared by local planning authorities in reaching a decision. For applications determined under section 104, the Secretary of State must decide the application in accordance with any relevant national policy statement (except where an exception applies.)
- 7.3 The Secretary of State has considered the matters discussed in the ExA's Report together with the ExA's view that *"the Proposed Development would result in less than significant harm to heritage assets, which are outweighed by the substantial benefit from the provision of energy to meet the need identified in NPS EN-1"* and the final planning balance which indicates that the Proposed Development is acceptable in planning terms and that the ExA recommends that the Secretary of State grants development consent. He notes the ExA's comments that the proposed development would make a significant contribution to the UK policy imperative to deliver a secure, diverse and affordable energy supply with sustainable means to securing decarbonisation of the supply noting that whilst the fuel throughput is the same, overall the Applicant estimates carbon intensity of the Proposed Development is lower than the carbon intensity of the NELC Planning Permission due to operational efficiencies. He considers overall that there is a compelling case for granting development consent, given the national need for the Proposed Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme, as mitigated by the terms of the Order. The Secretary of State agrees with the ExA's conclusion.
- 7.4 The Secretary of State has therefore decided to accept the Examining Authority's recommendation in paragraph 8.2.1 of the Report to make the Order granting development consent and to impose the requirements recommended by the Examining Authority, but subject to the modifications described below.

8 Other Matters

Human Rights

- 8.1 The Applicant has not requested powers of compulsory acquisition as part of the Application. The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development and notes there were no human rights concerns raised during the Examination. He has no reason to believe, therefore, that the grant of the Order would give rise to any unjustified

interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Equality Act 2010

- 8.2 The Equality Act 2010 includes a public sector equality duty (“PSED”). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under that Act or; (b) advance equality of opportunity between persons who share a relevant protected characteristic (age; gender reassignment; disability; marriage and civil partnerships⁷; pregnancy and maternity; religion or belief; sex, sexual orientation and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.3 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.4 The ExA states [ER 8.1.3] that it had regard to the Public Sector Equality Duty (“PSED”) throughout the Examination and in producing its report. *“The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED”.*
- 8.5 The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing the Application and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that neither the grant nor refusal of the Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

- 8.6 The Secretary of State has considered the Secretary of State’s duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.
- 8.7 The Secretary of State is of the view that the ExA Report, together with the environmental impact analysis, considers biodiversity sufficiently to inform his decision to grant consent to the proposed Development.

Climate Change Act and the Net Zero Target

⁷ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

- 8.8 The Secretary of State has considered that the UK's sixth Carbon Budget requires a 78% reduction of emissions by 2035 compared to 1990 levels. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 22 June 2021, following advice from the Climate Change Committee, the UK Government announced a new carbon reduction target for 2035 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2035 from 78% below the 1990 baseline.
- 8.9 The Secretary of State notes the Energy White Paper states that National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State considers, therefore, that the ongoing need for the Authorised Development is established and that granting the DCO would not be incompatible with the 2035 sixth Carbon Budget target or the 2050 Net Zero target—as specified in The Carbon Budget Order 2021 and The Climate Change Act 2008 (2050 Target Amendment) Order 2019 respectively. Operational emissions of the Proposed Development will be addressed in a managed, economy-wide manner, to ensure consistency with carbon budgets, net zero and our international climate commitments. The Secretary of State does not, therefore need to assess individual applications for planning consent against operational carbon emissions and their contribution to carbon budgets, net zero and our international climate commitments.

9 Modifications to the draft Order

- 9.1 The Secretary of State has made modifications to the Order recommended by the ExA as follows:
- Article 10 (street works): paragraphs (2) to (4) have been omitted because justification was not provided for carrying out street works in any streets not listed in Schedule 4 to the DCO by the Applicant.
 - Article 17 (felling or lopping of trees): paragraph (6) has been omitted because information on known tree preservation orders has not been provided by the Applicant.
 - Article 24 (defence to proceedings in respect of statutory nuisance): the reference to section 79(1) of the Environmental Protection Act 1990 has been limited to section 79(1)(g) because information was not provided about why this wider reference is required by the Applicant.
 - Article 28 (requirements, appeals etc.): has been amended to provide for a specific appeals procedure rather than rely on the procedure in the 1990 Act; this is the preferred approach to appeals.
 - Schedule 2 (Requirements), requirement 38 (habitat contribution) was inserted by the ExA. This has been amended to require a development consent obligation pursuant to section 106 of the Town and Country Planning Act 1990 to be secured by the parties specified before construction of Work No. 1.
 - Schedule 8 (Protective provisions) Part 5 (For the protection of Network Rail): a definition of “railway property” and “specified work” is inserted, as agreed with the Applicant and Network Rail.

10 Challenge to decision

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

11 Publicity for decision

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

Yours sincerely

Gareth Leigh
Head of Energy Infrastructure Planning

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

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

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/south-humber-bank-energy-centre/>

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