



Department for
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Our Ref: EN010114

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Dear Sir/Madam

PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR KEADBY 3 CARBON CAPTURE POWER STATION PROJECT

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 7 September 2022 of the Examining Authority (“the ExA”), comprising one examining Inspector, Christopher Butler BA (Hons), PG Dip TP, MRTPI, who conducted an examination into the application (“the Application”) submitted on 1 June 2021, by Keadby Generation 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 maintenance of a new electricity generating station of up to 910 megawatts (MW) gross electrical output, equipped with carbon capture and compression plant and fuelled by natural gas, including connections for cooling water, electrical, gas and utilities, construction laydown areas and other associated development.
- 1.2. The Application was accepted for examination on 28 June 2021. The examination began on 7 December 2021 and concluded on 7 June 2022. The Secretary of State received the report containing the ExA’s conclusions and recommendation on 7 September 2022. A total of 15 Relevant Representations (as defined in the Planning Act 2008) were received by the Planning Inspectorate [ER 1.4.27].
- 1.3. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER *.*.”].

- 1.4. The principal matters considered by the ExA, as set out in its Report are:
- Air Quality and Emissions, which includes from dust, smoke and steam.
 - Biodiversity, Ecology and Nature Conservation, which includes from dust and artificial light.
 - Climate Change.
 - Cultural Heritage.
 - Geology and Land Contamination.
 - Landscape and Visual Amenity, which includes visual effect and any impact from artificial light.
 - Noise and Vibration.
 - Socio-Economic Effects (Including Human Health), which includes from dust.
 - Traffic, Transport and Waste Management.
 - Water Quality/ Resources and Flood Risk/ Resilience.

Matters arising following the close of the Examination

- 1.5. Following receipt of the ExA's Report, the Secretary of State requested further information from the Applicant, the Environment Agency ("EA"), Network Rail Infrastructure Limited ("NR") and The Crown Estate ("TCE"), on 22 September 2022¹ in respect of compulsory acquisition and related matters. Responses were received on 7 October 2022 and the Secretary of State's consideration of these issues is set out in the relevant sections below.
- 1.6. The Secretary of State also received a representation from the Defence Infrastructure Organisation ("DIO") concerning change requests made by the Applicant and which repeat representations made during the Examination. The Secretary of State notes that requirements 34 and 35 are included in the Order to deal with Aviation warning lighting and Air safety.
- 1.7. A second letter requesting further information was issued by the Secretary of State on 21 October 2022² in respect of compulsory acquisition and related matters. The Secretary of State also received representations from Mr John Carney, which supplement those made in the Examination and are considered in the relevant sections below. A third letter was issued on 22 November 2022³ by the Secretary of State to specific parties in respect of matters raised in his letter of 21 October 2022. Further representations were also received from Mr John Carney. The Secretary of State's consideration of these issues is set out in the relevant sections below.

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010114/EN010114-001157-Offsen%20-%20Keadby%203%20-%20Information%20Request%20220922.pdf>

² <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-carbon-capture-power-station/?ipcsection=overview>

³ <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-carbon-capture-power-station/?ipcsection=docs>

Procedural matters and other considerations

- 1.8. The Order as applied for, would grant development consent for the construction, operation and maintenance of a new electricity generating station of up to 910 megawatts (MW) gross electrical output, equipped with carbon capture and compression plant and fuelled by natural gas, including connections for cooling water, electricity, gas and utilities, construction laydown areas and other associated development. As applied for, the Proposed Development would comprise Works set out at [ER 1.1.2 et seq.]. The Order requires that the authorised development must not be commenced after the expiry of 7 years from the date of the Order.
- 1.9. Powers of compulsory acquisition and temporary possession and the creation of new rights over land are also sought by the Applicant to support the delivery of the project.
- 1.10. A number of change requests were submitted by the Applicant during the course of the Examination. At deadline 6a ["DL6a"], the Applicant made a request to make four changes to the application. This request withdrew all previous change requests made and all documents related to those requests [ER 2.2.3]. The ExA considers that when taken cumulatively the proposed changes were material but did not amount to a different project being proposed [ER 2.2.4].
- 1.11. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website 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 policy and legal context are set out in section 2 of the ExA's Report. The ExA's findings are set out in sections 4 and 5 of the ExA Report, and the case for development consent and the ExA's conclusions on the terms of the Order are set out at sections 6, 7, 8 and 9 respectively.

2. Summary of the ExA 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:
 - The Proposal and the Site (Chapter 2)
 - Legal and Policy Context (Chapter 3)
 - The main planning issues (Chapter 4)
 - Findings and Conclusions in relation to Habitats Regulations Assessment ("HRA") (Chapter 5)
 - Conclusion on the case for Development Consent (Chapter 6)
 - Compulsory Acquisition and related matters (Chapter 7)
 - Draft Development Consent Order and related matters (Chapter 8)
 - Summary of findings and conclusions (Chapter 9)
- 2.2. For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the ExA's Report, the Examining Authority recommends that the Order be

made in the form attached at Appendix C to the report subject to the Secretary of State satisfying himself on the following matters [ER 8.4.1 et seq.]:

- *The completion of any side agreement between the Applicant and the EA.*
- *Network Rail's Protective Provisions ("PPs"), as set out in Schedule 10, Part 5 (For the protection of railway interests) of the Order, as set out in Appendix C of the rDCO are incorporated into the Order, if made; or the wording of the PPs contained in Schedule 10, Part 5 (For the protection of railway interests) of the DCO are as finally agreed between the Applicant and NR and workable in practice.*
- *The completion of any side agreement between the Applicant and Network Rail ("NR").*
- *It has been confirmed that the necessary Crown authority, in regard to the powers sought related to Crown Land and/ or Crown rights, consistent with the Book of Reference ("BoR") [REP6a-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.*

2.3. Subject to these points the ExA considered that the Proposed Development meets the tests in s104 of the PA2008 and recommended that the Secretary of State makes the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order in the form attached at Appendix C to its report.

2.4. This letter is intended to be read alongside the ExA's Report and unless it is specifically stated that the Secretary of State disagrees with the ExA's conclusions or recommendations then any perceived difference in emphasis between the summaries in this letter and the ExA's Report should not be inferred as conveying disagreement with the ExA's Report. Where not otherwise stated, the Secretary of State can be taken to agree with the ExA's findings, conclusions and recommendations as set out in the ExA's Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

3. Summary of the Secretary of State's decision

3.1. 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 ("the post-examination representations"). The Secretary of State's detailed 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 *.*.*"]. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

3.2. The Secretary of State has considered the overall planning balance and, for the reasons set out in this decision letter, has concluded that the public benefits for the proposal outweigh the harm identified, and that development consent should therefore be granted for the Proposed Development.

4. Matters considered by the ExA during the Examination

Policy and Need

- 4.1. The ExA notes [ER 3.1.1 et seq.] the relevant legal and policy considerations, including the National Policy Statement (“NPS”) EN-1 which makes clear that there is a need for the UK to move away from fossil fuels for electricity generation. Nevertheless, it recognises the urgent need for energy infrastructure to achieve energy security with substantial weight being given to the contribution projects would make towards satisfying this need and that the 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 [ER 4.4.5]. Paragraphs 3.6.4 to 3.6.7 of NPS EN-1 explain the role Carbon Capture and Storage (“CCS”) can have in meeting emissions targets while maintaining security of supply, as CCS has the potential to reduce carbon emissions by 90%. In the consenting of new fossil fuel generating stations that are at or above 300 megawatts (MW), the Government requires them to be constructed to be Carbon Capture Ready (“CCR”) (paragraph 3.6.6 NPS EN-1) [ER 4.4.6].
- 4.2. Paragraph 3.6.8 of NPS EN-1 emphasises the need for new fossil fuel generation to provide back-up to renewable generating capacity and to help with the transition to low carbon electricity generation [ER 4.4.7]. Section 3.8.1 of NPS EN-1 highlights that although the UK’s reliance on fossil fuels will fall, the transition will take some time, and gas will continue to play an important part in the country’s fuel mix for many years to come. It recognises the continued need for gas-fired generation to form part of the energy mix, albeit with CCR as a prelude to the introduction of CCS once it has been demonstrated at a commercial scale, in order to ensure security and flexibility of electricity supplies. This is also recognised in more recent Government policy, notably the Energy White Paper (EWP), (HM Government, 2020) [ER 4.4.8].
- 4.3. The ExA notes that the draft NPS EN-1 (Overarching NPS for Energy) is broadly consistent with the existing NPS recognising the need for new nationally significant infrastructure, whilst acknowledging gaseous fuels have a key role to play in the UK energy landscape [ER 4.4.12]. NPS EN-2 states the SoS should not consent new combustion generating stations with a generating capacity at or over 300 MW unless is satisfied that the proposed development meets all the criteria for being CCR as set out in EN-1 [ER 4.4.14]. The draft NPS EN-2 is broadly consistent with the existing NPS, particularly regarding matters to be considered [ER 4.4.16]. NPS EN-4 and NPS EN-5 (including relevant draft NPSs) are also considered [ER 4.4.17 et seq.].
- 4.4. The ExA has considered the case for the need for the Proposed Development [ER 4.8.1 et seq.] and the general requirement to consider alternatives or to establish whether the proposed project represents the best option. Having carefully considered the Proposed Development and how it would be controlled (as set out in the Climate Change section), which includes the installation of carbon capture and compression equipment from the outset [ER 6.3.5], the ExA considers that the Proposed Development would be CCR [ER 4.8.47]. In terms of alternatives, the Applicant considered a number of sites however the application site is considered to be the most appropriate because it is in close

proximity to the Zero Carbon Humber cluster and the underlying carbon pipeline that the Proposed Development could connect directly into [ER 4.8.3]. Other key advantages include that the site could be developed more quickly than others, and in the overarching context of the Energy White Paper that the Proposed Development would contribute to the Net Zero Strategy [ER 4.8.2 et seq.]. Based on the Applicant's responses and the ES (Chapter 6 – Consideration of Alternatives) the ExA considers the Proposed Development represents the best option for the choice of site, taking into account the environmental, social, economic effects and commercial feasibility [ER 4.8.6]. The ExA concludes the need for the Proposed Development is established through the NPSs, which recognise the public benefits of increased energy generation for infrastructure, maintaining the need for security and flexibility of energy supply. It is considered that the Proposed Development would contribute to meeting this need [ER 4.8.44].

- 4.5. The ExA is satisfied that sufficient consideration has been given to design and layout and adequate information has been provided on the consideration of alternatives, location, the nature of the power generation proposed, combined heat and power (“CHP”) and gas and electrical connections to satisfy the requirements of NPS EN-1 [ER 4.8.45]. Requirement 32 of the Order would adequately secure sufficient space and routes within the design for the latter provision of CHP for off-site users, which would be acceptable to the appropriate local planning authority [ER 6.2.17].
- 4.6. The ExA further notes the legislative and policy framework applicable to the assessment of this application (which includes the Marine and Coastal Access Act 2009), as referred to in Chapter 3 of the ExA report, and that no IP's raised any concerns or objections regarding the Proposed Development's conformity against such legislation and policy [ER 4.7.1]. The ExA concludes [ER 4.4.24 et seq.] that taking all relevant documents and policies into account that the need for the Proposed Development is established through the NPSs and draft NPSs. The Proposed Development conforms to policy in NPS EN-1, NPS EN-2, NPS EN-4, NPS EN-5 and the draft NPSs [ER 4.4.24].

The Secretary of State's Conclusions

- 4.7. The Secretary of State agrees with the ExA's assessment of need for this type of energy infrastructure and has taken into account that the Proposed Development would install carbon capture and compression equipment from the outset and consequently would support the UK's transition towards the net zero target. In accordance with paragraph 3.2.3 of EN-1 the Secretary of State attributes substantial weight to the contribution that the Proposed Development would make towards meeting the national need, demonstrated by NPS EN-1.

Air Quality and Emissions

- 4.8. The relevant policy considerations include paragraph 4.10.2 of NPS EN-1 which sets out the different functions of the planning and pollution control systems in relation to air quality matters. Paragraph 4.10.3 states that the Secretary of State is required to focus on whether the project itself is an acceptable use of land and

on the impacts of that use, rather than the control of processes, emissions or discharges from the development [ER 4.12.3].

- 4.9. The Applicant's case and assessment of impacts on air quality is set out in Environmental Statement ("ES") Chapter 8 [Air Quality] and ES Chapter 19 [Cumulative and Combined Effects], as added to by the ES Addendum Volume II Chapters and Appendices [ER 4.12.16 et seq.]. The Applicant notes that the Addendum Volume II overall magnitude of impacts and significance of effects remains comparable with those presented with the original ES [ER 4.12.31]. The Applicant's air quality assessment identifies key pollutants of concern resulting from construction and operation of the Proposed Development that have potentially elevated background concentrations from other sources. These are NO_x, NO₂, CO, NH₃ and PM_x [ER 4.12.22]. The Applicant's documents indicate that despite there being some sensitive human receptors along roads where construction traffic will be present, the largest change in Annual Average Daily Traffic (AADT) flows occur on the A18 to the west of the construction site access and along the A161. It considers the effects of changes in traffic flows on the road network are not significant, given that the magnitude of change between scenarios are so small where human receptors are present [ER 4.12.23].
- 4.10. The Applicant considered the impacts at all nationally and internationally designated ecological receptors identified and the ES considers that the Proposed Development is unlikely to give rise to significant effects as the change in pollutant concentrations are less than 1% of the relevant critical level or critical load, or that these are not exceeded. The predicted changes in pollutant concentrations at locally designated sites are less than 100% of the short and long-term Air Quality Assessment Level ("AQALs"), and it is considered unlikely to give rise to significant effects. As such the ES considers the effect of changes in traffic flows due to construction traffic on human health and ecological receptors is negligible (not significant) [ER 4.12.24].
- 4.11. In terms of air quality impacts arising from construction dust, the assessment identifies residential receptors (high sensitivity) and ecological receptors (low to medium sensitivity where they are a Local Wildlife Site ("LWS"); high sensitivity where they are internationally/nationally designated) within 350m of the site. Mitigation measures appropriate to the scale of perceived risk on receptors (including unmitigated dust impacts) are included in the CEMP secured at Requirement 17 [ER 4.12.25]. Air quality impacts arising from the use of non-road mechanical machinery ("NRMM") and abnormal loads delivered by waterborne transport are also considered. Emissions from site plant and NRMM will be controlled by measures set in the Framework CEMP. The ES considers the potential for NRMM emissions within the Proposed Development site that would result in air quality impacts on local human health receptors would be negligible (not significant) [ER 4.12.26].
- 4.12. If the preferred option of canal water abstraction (Work No. 4A) is selected no emissions from construction works, site plant and/or NRMM are considered to occur on designated sites (Ramsar/SSSI/SAC). In terms of the river water abstraction option (Work No.4B), due to the limited number of site plant and NRMM close to the estuary and the limited number and intermittent hours of operation it is not considered any impact would be experienced on the Ramsar/

SSSI/SAC sites because of site plant and NRMM emissions. As such, the Applicant considers any such effects are likely to be negligible (not significant) [ER 4.12.26]. This is also the case with abnormal loads delivered by waterborne transport impacts on the Ramsar site (Ramsar Convention on Wetlands of International Importance (“Ramsar”)/Site of Scientific Interest (“SSSI”)/Special Area of Conservation (“SAC”) and human health receptors [ER 4.12.26]. Matters with regards to air quality impacts on designated SPA, Ramsar sites and SACs are returned to in the Habitats Regulations Assessment below.

- 4.13. In terms of the Air Quality impacts of the operation of the Proposed Development, the ES predicts the impacts of all pollutant species released would result in negligible adverse effects at all receptors, within the study area. It considers the impacts of NO₂, CO, NH₃, amines, acetaldehyde, formaldehyde and acetic acid on all human health receptors to be not significant [ER 4.12.28]. The effects of amine degradation products are considered to be well below the proposed EA Environmental Assessment Level (EAL) for N-amines, with a worst-case N-amine concentration at a sensitive receptor as less than 20% of the EAL [ER 4.12.29]. In relation to NO_x and NH₃ the ES Addendum states that effects are not significant [ER 4.12.30].
- 4.14. In relation to the decommissioning phase, the Applicant’s ES predicted air quality is considered to be comparable to, or less than, those assessed for construction activities (i.e. not significant) [ER 4.12.32]. Best practice mitigation measures will be applied during any decommissioning works and documented in a Decommissioning Environmental Management Plan, secured through Requirement 38 of the Order (“DEMP”) [ER 4.12.32]. Residual impacts can be controlled through mitigation and management measures in the final CEMP, secured through Requirement 17 of the Order [ER 4.12.34]. Cumulative and combined effects are set out in ES Chapter 19, it concludes the combined effects, including either option of single or twin absorbers, the effects would remain the same. In terms of cumulative effects, based on currently available information, significant cumulative effects are still considered unlikely, notwithstanding the Proposed Development changes [ER 4.12.36].
- 4.15. Information on the amines to be used and the associated emissions were obtained from each licensor and worst-case emission levels were derived which enabled a worst-case assessment of potential effects [ER 4.12.47]. The EA, in its response to the ExA confirmed that amine products would be controlled through the Environmental Permit (“EP”) regime [ER 4.12.47]. The Applicant confirmed the use of Best Available Technique (“BAT”), and that monitoring will be applied, where appropriate, including in relation to amine products, and would be secured through the EP monitoring conditions [ER 4.12.48].
- 4.16. In relation to the cumulative impact of the Proposed Development from dust and emissions of PM_x from NRMM and the use of any generators, these matters would be controlled through the CEMP and any additional permits [ER 4.12.50]. The Applicant considered the CEMP would provide sufficient control over air quality effects and, as such, no further assessment was considered necessary or appropriate. No further concerns were raised by Interested Parties (“IPs”) in this regard and the ExA considered there was no reason to conclude otherwise from the evidence presented in the Examination [ER 4.12.50].

- 4.17. The Applicant submitted an updated HRA Appropriate Assessment (“AA”) report at DL6a. This report clarified design measures within the Proposed Development to meet regulatory requirements including proposed mitigation (abatement) measures, specifically for the control of NH₃ emissions in order to manage atmospheric pollutants [ER 4.12.51]. The ExA notes the Statement of Common Ground (“SoCG”) with NE in regards to these matters agrees the updated air quality information was submitted into the Examination within the updated HRA AA and the ES addendum [ER 4.12.52]. The ExA also notes that the completed SoCG with the EA agrees the EP should be applied for as a variation to the existing Keadby Power Station EP, and that this variation includes an appraisal of BAT and air impacts based on the current design submitted to the EA in July 2021, but also notes that if the design were to change a variation to the permit would be required [ER 4.12.53]. The ExA concluded that in terms of the change requests and the Applicant’s Addendum documents, (especially ES Addendum Volume II Chapters and Appendices supported by ES Addendum Volume III Figures) it sees no reasons to disagree with the conclusions reached [ER 4.12.55]. The ExA is satisfied that the Applicant’s responses, together with the responses of relevant IPs, provided the clarification that there are no outstanding matters in respect of air quality or emissions that need to be addressed [ER 4.12.56].
- 4.18. The ExA notes the North Lincolnshire Council’s (“NLC”) SoCG agrees the environmental effects on air quality from construction of the Proposed Development are not significant and no additional mitigation other than the CEMP has been identified as necessary for the construction phase [ER 4.12.54]. The parties agree that there would be no unacceptable impacts upon air quality because of the construction of the Proposed Development and that the assessment carried out is in accordance with the principles set out in NPS EN-1 and relevant sections of NPS EN-2, NPS EN-4 and NPS EN-5 [ER 4.12.54].
- 4.19. The ExA notes that the air quality assessment by the Applicant adequately assesses impacts on air quality. However, in the absence of an EP specific to this Proposed Development it is important to control the output capacity of the proposed power station [ER 4.12.57]. Subject to this and the imposition of appropriate requirements in the Order, no significant effects on air quality are likely to arise and residual impacts can be effectively managed through the mitigation measures secured in requirements of the Order [ER 4.12.58]. The output capacity of the proposed power station is secured in Works No.1 Schedule 1 of the Order [ER 4.12.58]. On this basis the ExA considers that the requirements of the Air Quality Directive (as implemented by the Air Quality Standards Regulations 2010 and the UK Air Quality Strategy) the NPS EN-1 and draft NPS EN-1 will be met. Air Quality effect is therefore neutral in the planning balance [ER 4.12.59].

The Secretary of State’s Conclusion

- 4.20. The Secretary of State has considered the ExA’s report and the Applicant’s responses, together with the responses of relevant IPs which provide the necessary clarification, and that the ExA considers there are no outstanding matters in respect of air quality or emissions that need to be addressed. The Secretary of State considers that with the mitigation measures in the CEMP, the

requirements secured in the Order, and the control of the output capacity, there will not be a significant effect on air quality.

Biodiversity, Ecology and Nature Conservation

- 4.21. Section 4.3 of NPS EN-1 sets out the policy considerations relevant to HRA. Paragraph 5.3.3 sets out the importance of assessing, as part of the ES, the effects of the Proposed Development on internationally, nationally and locally designated sites. Other relevant policy considerations are set out in [ER 4.13.4 et seq.] including NPS EN-2, which notes that where the project is likely to have effects on water quality or resources the applicant should undertake an assessment as required in NPS EN-1 and advises that appropriate measures should be in place to avoid or minimise adverse impacts of abstraction and discharge of cooling water [ER 4.13.7]. The Marine Policy Statement (“MPS”) provides a framework for taking decisions affecting the marine environment, including the River Trent at Keadby [ER 4.13.8]. The NPPF includes relevant policies including paragraph 174d which seeks, amongst other things, to protect and enhance our natural environment, minimising impacts on and improving biodiversity and securing measurable net gains for biodiversity. The ExA also notes relevant local plan policies, including emerging policies [ER 4.13.11 et seq.].
- 4.22. The Applicant’s case is set out in ES Chapter 11 [Biodiversity and Nature Conservation], as added to by the ES Addendum Volume I and II Chapters and Appendices, including accepted change request and additional information [ER 4.13.13 et seq.]. Included in the ES addendum documents is a change to the revised maximum parameters for the proposed adsorbers/stacks which indicates that concentrations of NO_x and NH₃ and related deposition of nutrient nitrogen are higher in respect of impacts on nature conservation sites [ER 4.13.36]. The ES addendums conclude that the potential impacts and resultant effects relating to air emissions from the Proposed Development, in combination with background levels (modified to include the future contribution from the Keadby 2 Power Station), would be negligible and not significant [ER 4.13.37].
- 4.23. The Applicant considers that in light of the detailed evidence [ER 4.13.17], taking into account all relevant potential impact pathways, that the potential construction effect on the Humber Estuary SSSI, SAC and Ramsar site is assessed as negligible (not significant) [ER 4.13.18]. The ES also concludes there are no likely significant direct or indirect construction impacts and effects on any other statutory nature conservation designations [ER 4.13.19]. The HRA Screening report concludes in relation to sites in the UK’s National Site Network (collectively referred to in this decision letter as “protected sites”) that the Proposed Development will have no likely significant effects (“LSEs”) [ER 4.13.19].
- 4.24. The ES recognises there would be a direct effect resulting from construction in regard to the Stainforth and Keadby Canal Corridor Local Wildlife Site (“LWS”), should the preferred canal water abstraction option be selected as the water supply option [ER 4.13.20]. However, there is considered to be only very limited potential to affect the designated biodiversity interest of the LWS as a result of the construction of the Proposed Development. The potential worst-case impact on the LWS would be adverse but no greater than that of the local level, given

the habitat conditions present, the large size of the LWS and the presence of the Keadby 2 Power Station water intake structure. The potential construction effect on the LWS is negligible (not significant) [ER 4.13.21].

- 4.25. Native grassland habitats are to be provided as part of the Landscaping and Biodiversity Management and Enhancement Plan (“LBMEP”) which would abut the LWS at North Pilfrey Bridge. It is considered this would enhance the habitat corridor for which the LWS is designated [ER 4.13.22]. The Applicant considers other works to the Hatfield Waste Drain LWS are minor construction works that will not adversely affect either the integrity of the LWS or the nature conservation status of its habitats. Overall, it is indicated that the potential construction effect on the LWS would be negligible (not significant) [ER 4.13.25]. No other likely significant direct or indirect construction impacts and effects on local nature conservation designations are identified [ER 4.14.26].
- 4.26. The temporary construction laydown areas result in a small-scale loss of vegetation and open mosaic habitat (“OMH”). The Applicant has assessed the effect as meaningful at a local level only and characterised as “minor adverse (not significant)” [ER4.13.27]. Temporary works for the construction of the Power and Carbon Capture (“PCC”) site would result in the permanent loss of 0.8ha of dense scrub of local nature conservation value, as well as minor losses of scrub. The reinstatement of scrub as part of soft landscaping will form part of the LBMEP and is secured in requirement 6 [ER 4.13.28].
- 4.27. In terms of protected species, including bats, badgers, grass snake, breeding birds, fish and aquatic invertebrates, the Applicant assesses the potential construction effect as all negligible (not significant) [ER 4.13.31]. The Applicant has committed to undertake further survey work regarding protected species, prior to works commencing and that a scheme of protection and mitigation measures of the protected species identified will be secured, as part of requirement 6 and the mitigation approach of the Framework CEMP secured in the Order. In relation to the impacts of operation on wildlife, the ES confirms the effects on bats, terrestrial invertebrates, and flora are all assessed as negligible (not significant) [ER 4.13.47].
- 4.28. The ES considers the potential impacts and resultant effects from air emissions from the Proposed Development, in combination with background levels (which include the future Keadby 2 Power Station) were found to be negligible and not significant. The annual contribution of NO_x was predicted to exceed 1% of the critical level at the Humber Estuary SAC and Ramsar site due to its proximity to the Proposed Development [ER 4.13.34]. The ES considers, due to the existing baseline plus the emissions of the Proposed Development, this to be less than 70% of the critical level threshold for insignificance and the potential impact from NO_x would be negligible and not significant at all protected sites and national nature conservation sites [ER 4.13.34]. For all other atmospheric pollutants, the ES states the 1% threshold for insignificance is not predicted to be exceeded at any protected sites or nationally designated sites as a result of the Proposed Development [ER 4.13.35]. There is further considered to be no change to the conclusions of potential impacts and resultant effects relating to air emissions from the Proposed Development, in combination with background levels, as a

result of the changes identified in the ES addendum documents [ER 4.13.36 et seq.].

- 4.29. The impacts of the discharging of treated cooling water to the river Trent and impacts associated with the river water abstraction option, will require a permit from the EA, which will control volumes and rates of abstraction, effluent quality and rates of discharged waters and will consider the requirement to maintain the biodiversity and nature conservation status of the River Trent and the Humber Estuary designations. Given controls, no adverse effects on the Humber Estuary nature conservation designations are predicted [ER 4.13.38]. No other pathways are identified that could result in adverse operational impacts and effects on statutory nature conservation designations. Therefore the predicted effect on all protected sites and such designations is negligible (not significant) [ER 4.13.39].
- 4.30. The ES has considered potential impacts and resultant effects relating to emissions on the LWS within 2km of the Proposed Development, including a potential impact from nitrogen deposition at the Keadby Wetlands LWS, the predicted effect is considered to be negligible (not significant) [ER 4.13.40 et seq.]. The predicted effect on Keadby Wetlands LWS remains following change request 3 [ER 4.13.44]. No other pathways were identified, by the Applicant or IPs that could result in adverse impacts and effects on non-statutory nature conservation designations [ER4.13.45].
- 4.31. The EA is satisfied that sufficient water can be abstracted to meet the Applicant's needs and maintain biodiversity and conservation status [ER 4.13.43]. The Applicant considers there would be no LSEs on the Stainforth and Keadby Canal LWS and given no impacts on water availability or chemical water quality are likely, no adverse effects on the LWS are predicted [ER 4.13.43]. Effects on acid grassland habitats and OMHs on previously developed land in the ES, having considered change request 3, are also considered to be negligible (not significant) [ER 4.13.46].
- 4.32. Impacts of discharging cooling water from the Proposed Development to the River Trent, has been considered. Thermal impacts are not likely to have an adverse effect on the conservation status of fish using the River Trent catchment, as the temperature of cooling water will be lower than that already associated with Keadby 1 Power Station. The Proposed Development will not operate at the same time as any discharge from Keadby 1 Power Station but would use the existing Keadby 1 Power Station infrastructure [ER 4.13.49]. Modelling of the thermal discharge from Keadby 1 Power Station concluded there would be no impact to the overall status of fish populations. This is supported by a conclusion reached by the EA on migration impacts of river and sea lamprey between the River Trent and the Humber Estuary [ER 4.13.50]. Given this, the potential effect is assessed as negligible (not significant) [ER 4.13.51].
- 4.33. In regard to decommissioning, requirement 38 of the Order requires the submission of a DEMP, to be submitted to the relevant planning authority within 12 months of the decommission to control activities and ensure it is conducted in accordance with the guidance and legislation in force at the close of the Proposed Development [ER 4.13.53]. On this basis no significant adverse effects are anticipated as a result of decommissioning [ER 4.13.54]. Mitigation, monitoring

and enhancement measures, are incorporated into the Framework CEMP and carried over into the LBMEP, which is acceptable to both Natural England (“NE”) and EA [ER 4.13.80], and are secured in the Order. An Environmental Permit to operate the Proposed Development would be monitored and enforced by the EA [ER 4.13.56].

- 4.34. The ExA notes the SoCG with the Canal and River Trust has agreed the Applicant proposes to undertake a review of biodiversity enhancements using the DEFRA Metric 3.0 and that opportunities exist for additional canal-side areas [ER 4.13.87]. The Canal and River Trust confirmed the withdrawal of its objection to the Proposed Development at the end of the Examination [ER 4.13.88]. NE confirmed that there were no outstanding matters with the Applicant regarding the Proposed Development [ER 4.13.65].
- 4.35. The ExA concludes that it is satisfied that all concerns raised by IPs, including those from NE, have been adequately addressed during the Examination. Subject to the imposition of requirements in the Order, the ExA is satisfied that the Proposed Development is unlikely to have significant effect on ecological and/or nature conservation and would adequately secure the mitigation necessary to address those effects. Furthermore, the ExA is satisfied that the Proposed Development will result in a BNG in excess of 10% [ER 4.13.94]. The ExA further considers that the biodiversity, ecological and nature conservation issues have been adequately assessed and meets the requirements of both NPS EN-1 and draft NPS EN-1. As such it considers the effects to be a positive contribution in the planning balance [ER 4.13.95].

The Secretary of State’s Conclusion

- 4.36. The Secretary of State has considered the ExA’s Report, submissions made during the Examination and the Applicant’s ES. The Secretary of State agrees with the ExA’s conclusions and considers that the issues have been adequately assessed and that the requirements of both NPS EN-1 and draft NPS EN-1 are met. He further considers that the BNG arising from the Proposed Development will enhance biodiversity. Further consideration relating to Humber Estuary SSSI, SAC and Ramsar site are set out in section 5 of this letter.

Climate Change

- 4.37. The ExA notes relevant policy considerations [ER 4.14.2 et seq.] including the Climate Change Act 2008 (as amended) which commits the UK Government to reducing GHG emissions by at least 100% of 1990 levels by 2050 [ER 4.14.2 et seq.]. The 2011 Carbon Plan is the UK’s national strategy under The Climate Change Act. It indicates by 2050, electricity supply will need to be almost completely decarbonised and electricity will be generated largely from three main low carbon sources, which includes fossil fuel stations fitted with CCS technology [ER 4.14.6]. The ExA has also considered the Clean Growth Strategy, within this action plan Humber is identified as a key location for CCUS due to its heavy industry and chemical manufacturing [ER 4.14.10]. Other policy is noted including the Energy White Paper, Powering our net zero future (2020). NPS EN-1 emphasises the importance of a diverse mix of energy generating technologies. NPS EN-1 promotes CCS as an emerging technology that the Government is

aiming to facilitate and encourage, including for gas-fired generating stations. NPS EN-2 describes the need for all new fossil fuel electricity generating plants to assess the viability for supporting CCS technologies. In addition, the ExA notes other relevant policy considerations [ER 4.14.19 et seq.] including paragraph 152 of the NPPF, which states that the planning system should support the transition to a low carbon future in a changing climate [ER 4.14.21].

- 4.38. The Applicant's case is set out in ES Chapter 17 [Climate Change and Sustainability], as added to by the ES Appendix 17A which provides a sustainability review [ER 4.14.26]. The conditioned and dehydrated CO₂ produced from the CCP would be compressed and metered, then discharged into the CO₂ gathering network for onwards transport to an offshore carbon store for permanent storage and not released to the atmosphere. The ExA notes that the proposals for consenting the carbon gathering network (the dioxide export pipeline) are to be progressed under a separate Development Consent Order and do not form part of this submission [ER 4.14.27]. The Applicant has calculated the total construction related GHG emissions and for operation (including indirect operational emission sources, like worker transport, waste generation and transport, consumption of water and disposal of wastewater) [ER 4.14.28 et seq.]. This shows that using the reference scenario, with carbon capture, up to 90.7% of these emissions will be captured, geosequestered and not released into the atmosphere [ER 4.14.30]. Emissions generated during the Decommissioning stage are assumed to be commensurate with emissions generated during the construction stage [ER 4.14.32].
- 4.39. Emissions associated with the Proposed Development have been examined for their significance against the UK carbon budgets. Assuming 42 months of construction, and one year of operation occurring during the 4th carbon budget and five years during each of the 5th and 6th carbon budgets, the percentage contribution of emissions to the respective carbon budgets are 0.02%, 0.07 % and 0.12%, respectively [ER 4.14.33]. The Applicant considers the magnitude of impact is considered low against the current UK carbon budgets. Total GHG emissions would not exceed 1% of the UK carbon budget limits and are considered as having a low increase magnitude and is classified as minor adverse significance. As such the operation is not expected to affect the UK in meeting its current carbon budgets, with the exception that the Proposed Development would support the UK's transition towards the net zero target [ER 4.14.34]. The ES concludes that no significant in-combination climate change impact or climate change resilience risks were identified, and no further mitigation or enhancement measures have been proposed other than those secured within the CEMP during construction, and those required under an EP during the operational stage [ER 4.14.35].
- 4.40. NLC consider that the Proposed Development would provide a positive impact in terms of low carbon electricity generation which will help to deliver carbon reduction policies set out in planning policies, the UK Clean Growth Strategy, Environment Bill and the Humber Clean Growth Local White Paper. The development could contribute to a reduction in the carbon emissions of the energy supply of the UK and provide a secure and stable energy source. NLC consider this is a significant positive impact but that it has to be balanced against

the potential environmental impacts of the proposed scheme [ER 4.14.36]. ClientEarth raised a number of concerns with the proposed Order and whether it would secure the operation of the power plant commercially only when the associated carbon capture, transport and storage infrastructure are also in commercial operation [ER 4.14.37]. This was resolved during the Examination with changes made to the Order by the Applicant to include definitions of ‘carbon capture and compression plant’, ‘commercial use’ and ‘commissioning’ at Article 2(1) [ER 4.14.58]. The ExA is satisfied that with the additional wording in Article 3, Schedule 1 of the Order and requirement 33 (Carbon capture and compression plant) that the Proposed Development could not commence, save for preliminary works, until relevant consents, licences, permits and authorisations, in part relevant to the carbon gathering network, are in place [ER 4.14.59].

- 4.41. The Applicant’s completed SoCG with National Grid Carbon Ltd (“NGC”) sets out the relationship with the Humber Low Carbon Pipeline (“HLCP”) network, the position in regard to requirements with the Order and confirmed PPs for the benefit of NGC [ER 4.14.48]. NGC confirmed at the close of the Examination it had no outstanding objections [ER 4.14.49].
- 4.42. The EA considered the Applicant’s submission in respect of CCR and CCS and confirmed that enough land has been set aside to accommodate the carbon capture plant, and sufficient information is available to conclude there are no foreseeable barriers to the technical feasibility of installing this. The ExA concludes no evidence was submitted into the Examination that would lead it to conclude otherwise, and there is no reason to conclude the Proposed Development would not be CCR as set out in the NPSs [ER 4.14.52]. The ExA notes that the Applicant has given clear indications that it intends to construct the Proposed Development, including the Carbon Capture Plant and related infrastructure within the Order Limits specified in Work No. 1C (the Carbon Dioxide Capture Plant). Work No.7 (a high-pressure carbon pipeline) is also specified in Schedule 1 (Authorised Development) of the Order and is required to export CO₂ from Work No. 1C to the NG Carbon Gathering Network and above ground CO₂ compression and export infrastructure on land at Keadby Power Station [ER 4.14.56].
- 4.43. Additionally, Schedule 2, Requirement 33 (Carbon capture and compression plant) of the Order prevents authorised development commencing, save for permitted preliminary works, until specified consents, licenses, permits and authorisations, in part relevant to the carbon gathering network, are in place [ER 4.14.57]. The ExA is also satisfied Work No. 1A (the CCGT plant) cannot be brought into commercial operation until Work No 1C (the Carbon Dioxide Capture Plant) and Work No 7A (the Compressor Station) have also been brought into commercial use. The compressor station would ultimately be linked to the high-pressure CO₂ pipeline [ER 4.14.57]. Article 2(1) was also amended during the Examination to address concerns raised by ClientEarth, who confirmed they are satisfied that these changes appropriately define the carbon capture and storage aspects of the Proposed Development [ER 4.14.58]. In addition, in the absence of an EP the ExA considers it appropriate that the gross output capacity of the proposed power station is limited to no more than 910MW, as specified in Schedule 1 of the Order [ER 4.14.60].

- 4.44. The ExA notes that in regard to GHG emissions arising from the operation of the Proposed Development, it is clear that when considered in isolation, a rise in emissions would result. The ES states that in abated mode (i.e. with carbon capture), c.90.7% of emissions would be captured and not released into the atmosphere [ER 4.14.53]. Emissions from the construction would contribute considerably less than 1% of the total UK carbon budget emissions during any five-year carbon period under which they arise. The magnitude is considered low, with the significance of effects considered as minor adverse. The ExA considers that the Proposed Development is not expected to adversely affect the UK in meeting its current carbon budgets, with the exception that the Proposed Development would support the UK's transition towards the net zero target [ER 4.14.55].
- 4.45. The ExA concludes that the Proposed Development would contribute to meeting the UK's carbon commitment and would support the UK's transition towards a low carbon economy, whilst bearing in mind the need for all types of infrastructure and maintaining the need for security and flexibility of supply as set out in NPS EN-1 [ER 4.14.64]. The ExA notes that on balance, the Proposed Development would accord with the guidance in NPS EN-1, EN-2, draft NPS EN-1 and EN-2 and would be in accordance with the UK's commitment under the CCA2008 and the Paris Agreement 2015. Climate change effects are considered to be a neutral consideration in the planning balance [ER 4.14.64].

The Secretary of State's Conclusion

- 4.46. The Secretary of State has considered the ExA's report and agrees with the ExA's conclusions and that, with the inclusion of the measures set out in the Order limits, the Proposed Development would contribute to meeting the UK's carbon commitment and would support the UK's transition towards a low carbon economy. The Secretary of State agrees that this matter is neutral in the planning balance.

Cultural Heritage

- 4.47. NPS EN-1 Part 5 identifies the construction, operation and decommissioning of energy infrastructure as having the potential to result in adverse impacts on the historic environment, including designated and non-designated assets [ER 4.15.2]. Other policy considerations are relevant and are set out at [ER 4.15.4 et seq.] including paragraph 199 of the NPPF which states that when considering the impact of Proposed Development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater the weight that should be given. Any harm or loss of designated heritage assets requires clear and convincing justification (paragraph 200). Where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (paragraph 202) [ER 4.15.5].
- 4.48. The Applicant's ES Chapter 15 and appendices (Heritage Assessment) assesses the effect of the Proposed Development on cultural heritage within defined study areas, as well as assessing the potential for unknown archaeological remains. ES Addendum Volume II Chapters and Appendices was

submitted as part of the change request at DL6a. This additional information included an Interim Report on Archaeological Investigation and Recording and an Outline Written Scheme of Investigation (WSI), which was subject to review and agreement by NLC's Historic Environment Officer ("HEO") prior to submission into the Examination [ER 4.15.24]. Additionally, ES Addendum Volume I highlight the maximum parameters for the gatehouse, as shown in Indicative General Arrangement and Elevations Plans [ER 4.15.2].

- 4.49. The Secretary of State notes that Historic England ("HE"), in the completed SoCG with the Applicant, agreed the approach taken to assess the effects on built heritage (designated and non-designated assets) was appropriate [ER 4.15.37]. NLC raised concerns with the adequacy of the ES in terms of impact on archaeology and in response to this the ExA sought further information from parties. HE advised that the second stages of evaluation recommended by NLC should be commissioned. Following submission of the Applicant's Outline WSI NLC confirmed the Applicant's approach was satisfactory [ER 4.15.40].
- 4.50. The ES identifies that the character of the historic landscape differs either side of the Stainforth and Keadby Canal. To the north, is the 1950s coal fired power station, the construction of Keadby 1 Power Station and the construction of Keadby 2 Power Station (nearing completion) and the Proposed Development site, which has a more industrial character. To the south of the canal the Proposed Development site crosses a historic landscape that comprises post-medieval to modern private planned enclosures and modern fields [ER 4.15.9]. As such the historic landscape character within the Proposed Development site to the north of the Stainforth and Keadby Canal has been assessed as being of low sensitivity to change, whilst the development site to the south is considered to have a medium sensitivity to change due to its proximity to the Isle of Axholme Area of Special Historic Landscape Interest [ER 4.15.10].
- 4.51. Future baseline and effect on built heritage assessed two scenarios (Keadby 1 Power Station remains – scenario 1; and Keadby 1 Power Station removed – scenario 2) [ER 4.15.11]. It considered, due to the continued presence of Keadby 2 Power Station, Keadby Windfarm and the industrial nature of the existing development that form part of their setting, that the sensitivity of each of the heritage assets would remain unchanged [ER 4.15.11]. The Proposed Development's close proximity to Keadby 1 and Keadby 2 Power Stations and their related infrastructure is considered to reduce the impact of the Proposed Development on below ground archaeological remains [ER 4.15.12].
- 4.52. The ExA notes that the Proposed Development will be seen within the existing industrial context with large stacks, industrial buildings and associated pylons already prominent in the skyline. Whilst the Proposed Development would result in the erection of tall structures these would not be discernibly or significantly different from those that exist on the site of the existing Keadby 1 and 2 Power Stations [ER 4.15.42].
- 4.53. The Proposed Development would be visible from designated and non-designated heritage assets, including Keadby Lock, Keadby Bridge, 94 Old Village Street and the Church of St Oswald (Althorpe). However it would be seen within the existing industrial context. As such the ExA considers it will have a

neutral to minor adverse (not significant) impact on the designated heritage assets and the majority of non-designated heritage assets [ER 4.15.43]. The exception is the moderate adverse/significant impact on the non-designated heritage asset of the Isle of Axholme Area of Special Historic Landscape Interest. The Applicant's assessment identifies that this is a local designated asset considered to be of high value for its historic and archaeological interest as a rare survival of open-field strip-cultivation and turbaries [ER 4.15.18]. The proposed site lies c.2km north of the northern extent of the area, where views are available across the flat landscape to the existing Keadby 1 Power Station, Keadby Windfarm and the Proposed Development site [ER 4.15.18]. The significance of the Isle of Axholme Area places importance on the Proposed Development site as falling within its setting, as its presence will perpetuate a form of development that is out of character with the defining characteristics of the core area. Nevertheless the Proposed Development will take place within an area already changed through development of a similar type and scale, which will minimise harm caused through the introduction of this type of development into the landscape [ER 4.15.19].

- 4.54. The Applicant notes that the proposed A18 junction improvements and permanent security gatehouse and parking on the access road will bring the development closer, in terms of views, than Keadby 1 and 2 Power Stations. Together with distant views of the Proposed Development it is considered to have a low magnitude of impact on the asset's setting but is considered to result in a moderate adverse effect, which, in the absence of mitigation would be significant [ER 4.15.20]. The impacts of operation with the two scenarios, Keadby 1 Power Station remains (Scenario 1) and is removed (Scenario 2), and decommissioning have also been considered. The ExA notes that no substantiated concerns were received from IPs in regard to the magnitude of impact on the asset through the presence of the Proposed Development within its setting, which the ExA considers to be low, or in the absence of mitigation there would likely be a moderate adverse/significant effect [ER 4.15.44].
- 4.55. In considering the assessment of effects on designated heritage assets, the ExA notes this ranges from neutral to minor adverse. The Proposed Development would result in less than substantial harm to the significance of designated heritage assets, albeit this is considered to be minor adverse. This harm needs to be weighed in terms of the scale of harm or loss and the significance of any designated heritage assets against the public benefits arising from the Proposed Development [ER 4.15.45].
- 4.56. The ExA considers the Proposed Development will have a neutral to minor adverse effect on all but one non-designated heritage asset, the Isle of Axholme Special Historic Landscape Area [ER 4.15.46].
- 4.57. The ExA concluded that the Applicant has adequately assessed the significance of the heritage assets affected by the Proposed Development and that sufficient information to reach a conclusion on the nature, significance and value of identified designated and non-designated heritage assets, along with sufficient understanding of the contribution that setting makes to their significance and the implications of the Proposed Development for those settings has been submitted so that the extent of the impact can be understood. The ExA concludes that the

Application would meet the requirements of NPS EN-1 and draft NPS EN-1 in that regard [ER 4.15.48].

- 4.58. In conclusion the ExA considers that that there would be less than substantial harm on designated heritage assets, whilst harm to non-designated heritage assets, especially the non-designated Isle of Axholme Special Historic Landscape Area, would also occur. These harms are weighed against the public benefits of the Proposed Development in the Planning Balance of the ExA's report [ER 4.15.49].

The Secretary of State's Conclusion

- 4.59. The Secretary of State notes the conclusions of the ExA in relation to the significance of those assets and the level of harm to each designated and non-designated asset. The Secretary of State is aware that when there is an identified harm to a heritage asset he must give that harm considerable importance and weight in the planning balance and does so in this case. However in light of the public benefits of the Proposed Development [ER 6.3.6 et seq.], the Secretary of State agrees with the ExA's conclusion that cultural heritage effects overall do not provide a justification not to make the Order.

Geology and Land Contamination

- 4.60. NPS EN-1 section 4.10 details issues relating to discharges or emissions from Proposed Development that may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes. Before consenting any potentially polluting development it should be confirmed that the relevant pollution control authority is satisfied and the effects of existing sources of pollution in and around sites are not cumulatively (when proposed development is added) unacceptable [ER 4.16.2]. Section 5.3 of NPS EN-1 states that where development is subject to EIA, the ES should clearly set out the effects on geology [ER 4.16.3]. NPPF section 15 includes policies related to conserving and enhancing the natural environment, paragraph 183 states that sites should be suitable for its proposed use taking into account ground conditions and any risks arising from land instability and contamination. The NPPF also encourages the use of previously developed land [ER 4.16.6].
- 4.61. Chapter 13 (Geology, Hydrogeology and Land Contamination) of the ES overlaps with Chapter 12 (Water Environment and Flood Risk) together with relevant appendices and ES Addendum Volume II which consider the existing geological, hydrogeological and land contamination impacts from the Proposed Development during construction, operation and decommissioning [ER 4.16.9].
- 4.62. NLC confirmed there is a potential risk for contaminants to be present in the ground and identified a number of risk assessments. Their recommendation is for a ground investigation to be undertaken before construction to inform the development of the preliminary and detailed design, designed to target the potentially contaminative sources identified on the Proposed Development site. Based on this further detailed quantitative risk assessment, if required, detailed remediation strategies will be provided [ER 4.16.21]. NLC consider the phase 1

investigation and its conclusions to be acceptable, subject to the findings of intrusive site investigation [ER 4.16.22].

- 4.63. The EA confirmed it was satisfied with the Geology, Hydrogeology and Land Contamination chapter of the ES in relation to controlled water protection and that it provides a satisfactory assessment of potential pollution risks to surface water and groundwater. The EA also confirmed the impact avoidance and mitigation measures relating to contaminated land and groundwater and unexpected contamination specified in the requirements of the Order were appropriate, as is the method of piled foundations in relation to controlled waters [ER 4.16.28].
- 4.64. Inconsistencies in the Order relating to dust and land and contamination impacts identified by the UKHSA were satisfactorily addressed during the Examination and the SoCG with the UKHSA and the Applicant confirms there were no matters not agreed between the parties [ER 4.16.24]. The ExA reports that no other concerns were raised by IPs in respect of ground conditions or contamination, in relation to the change request or the additional information provided in the ES Addendum Volume II [ER 4.16.25].
- 4.65. The SoCG with NLC agreed best practice measures to minimise pollution risks which are secured as a requirement within the Order, as a scheme to deal with any contamination of land, including groundwater, that is likely to cause significant harm [ER 4.16.31]. Impacts would be managed by appropriate construction mitigation measures secured in the final CEMP in requirement 17 of the Order. As such, effects are not anticipated and have been assessed as not significant [ER 4.16.32].
- 4.66. The ExA concludes that there was no evidence before the Examination to disagree with the positions of IPs, including the accepted change request and the Applicant's ES Addendum documents. The ExA concludes that it sees no reason to disagree with the conclusions reached that no changes to the likely residual effects will result from the Proposed Development and the residual effects will remain as reported in the ES. The ExA considers the assessment carried out and its conclusion are compliant with all relevant legislation and policy requirements in respect of ground conditions and contamination and that relevant matters are adequately secured in the Order [ER 4.16.33].
- 4.67. The ExA is satisfied that the Proposed Development would accord with relevant legislation and policy requirements, including NPS EN-1, EN-2, EN-4 and EN-5 and the draft NPSs. Matters relating to ground conditions and contamination are therefore neutral in the planning balance [ER 4.16.35].

The Secretary of State's Conclusion

- 4.68. The Secretary of State has considered the ExA's conclusions. The Secretary of State agrees with the ExA that the risk and potential impacts of ground conditions and contamination have been considered appropriately. The Secretary of State considers that the mitigation measures proposed are appropriate. The Secretary of State agrees that this matter is neutral in the planning balance.

Landscape and visual amenity

- 4.69. The ExA report identifies that the Proposed Development site does not lie in any national or regional designation for landscape protection. It is an area characterised by open, low-lying, flat landscape with open views. The immediate locality contains large scale structures and buildings, together with ancillary structures, which in combination are considered to degrade the surrounding rural landscape character [ER 4.17.1].
- 4.70. NPS EN-1 notes that the landscape and visual effects of energy projects will vary on a case-by-case basis according to the type of development, its location and the landscape setting of the Proposed Development. Paragraph 5.9.5 requires the Applicant to carry out a landscape and visual assessment [ER 4.17.2]. NPS EN-1 also recognises that virtually all nationally significant energy infrastructure projects will have effects on the landscape, and that projects need to account for any potential impacts [ER 4.17.3]. NPS EN-2 also recognises the landscape impacts of structures for fossil fuel generating plant and recognises the impacts on visual amenity [ER 4.17.11 et seq.]. However, in recognising statutory and technical requirements which inform plant design, paragraph 2.6.10 states that provided that the location is appropriate, and the development has been designed sensitively the visibility of a fossil fuel generating station should be given limited weight [ER 4.17.15]. Other relevant policies include the MPS which provides a framework for taking decisions affecting the marine environment, including the River Trent at Keadby, the NPPF and relevant Local Development Plan policies [ER 4.17.16].
- 4.71. The ES (including the ES Addendum Volume II and supplemented by Addendum III Figures) assesses the landscape and visual effects during all phases of the project based on the maximum extent of the Proposed Development. It identifies the Zone of Theoretical Visibility based on a stack height of 107.6m AOD. The Application is accompanied by Indicative Layout, Elevations and Sections and the Order includes a provision for the submission of detailed design for the approval of the local planning authority [ER 4.17.19].
- 4.72. The ExA notes that Keadby with Althorpe Parish Council raised concerns in regard to the landscape and visual impact of a third power station in the area and that the SoCG with the Applicant remained unsigned at the close of the Examination, as such the ExA afforded it little weight [ER 4.17.39]. Representations were also received from a local resident over concerns with light pollution, especially in terms of its effect on residential amenity during both construction and subsequent stages with additional landscaping suggested to interrupt the passage of light [ER 4.17.40]. The ExA asked the Applicant about planting of additional trees as potential mitigation and whether this would interrupt the perceived passage of light. The Applicant responded it was willing to provide additional planting but that this would not be for the purposes of mitigating effects of construction lighting in the direction of Amcott village, as no significant effects are predicted [ER 4.17.44]. The Applicant submitted an Indicative Lighting Strategy, as part of the Order, NLC confirmed it considers the potential light impacts would be adequately mitigated. The ExA confirmed it is satisfied that this matter will be adequately controlled through the Order and that the relevant

planning authority would pursue any breach of control should it be expedient to do so [ER 4.17.45].

- 4.73. NLC stated that it did not consider it feasible to eliminate the visual impacts of the Proposed Development and as such there would be residual effects in this regard. It accepted any visual impacts/residual effects need to be balanced with the location which already supports substantial industrial developments, which contribute significantly to the character of the area [ER 4.17.41]. The ExA notes that no other IPs raised concerns in regard to landscape or visual amenity or in regard to the Applicant's assessments. Further, no additional concerns arose from the Applicant's accepted change request or the ES Addendum Volume II or Volume III Figures [ER 4.17.42].
- 4.74. The ExA sets out its conclusions from site inspections [ER 4.17.43 et seq.] including the potential for changes at the detailed design stage (the potential raising of the CCGT critical operational infrastructure from no less than 3.6m AOD to 4.4m AOD) set out by the Applicant [ER 4.17.47]. The ExA notes that it was clear from its site inspections that the visual impact of the Proposed Development would be as a result of the size and height of the main buildings and from the proposed stacks, both of which would be visible up close and further afield [ER 4.17.48]. It further notes that the potential impacts on local and more distant views and landscape character types but considers the Proposed Development would be seen in the context of the significant existing industrial, energy related development [ER 4.17.49]. Whilst moderate adverse effects on visual amenity are predicted at three viewpoints, overall, the potential for harm is considered to be relatively low as the new structures will be viewed in its context (i.e. as a minor additional effect on areas already affected by intrusive structures being set within an area already affected by power stations, pylons and windfarms) [ER 4.17.50]. The potential for raising of CCGT critical infrastructure does not change the ExA's opinion in this regard. It concludes the marginal increase if this occurs, would not have any significant effect on the surrounding area in general or the wider landscape, especially in terms of overall height, design, landscape visibility impact [ER 4.17.50].
- 4.75. The ExA concludes that the Proposed Development would not appear unduly prominent or out of place and the effects, in landscape and visual terms, do not outweigh the benefits of the project [ER 4.17.52]. The ExA considers the assessments of landscape and visual effects of the Proposed Development meet the requirements of NPS EN-1, EN-2 and draft EN-1 and EN-2 and it is satisfied that the Proposed Development is unlikely to have a significant effect on landscape or visual amenity. Furthermore requirements in the Order will ensure that further consideration is given to the design so as to reduce its visual impact, whilst Schedule 11 sets out maximum design parameters for key elements of the Proposed Development. The visual impact is therefore neutral in the planning balance [ER 4.17.53].

The Secretary of State's Conclusion

- 4.76. The Secretary of State is satisfied that the ExA has appropriately considered all the potential landscape and visual impacts of the Development. The Secretary of State agrees that the Proposed Development would not appear unduly prominent

or out of place and the effects of the Proposed Development, in landscape and visual terms, do not outweigh the benefits of the project. The Secretary of State agrees the visual impact is therefore neutral in the planning balance.

Noise and vibration

- 4.77. The ExA considered the potential noise and vibration impacts and effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development against relevant policy considerations. NPS EN-1 recognises that excessive noise can have impacts on the quality of human life, health, and the use and enjoyment of areas of value and areas with high landscape quality [ER 4.18.2 et seq.]. NPS EN-1 recognises that the primary mitigation for noise from fossil fuel generating stations is through good design including enclosure of plant and machinery in noise reducing buildings wherever possible [ER 4.18.8]. NPS EN-2 sets out policy specific to fossil fuel power stations, paragraph 2.7.1 identifies sources of noise that are relevant to the Proposed Development including gas and steam turbines that operate continuously during normal operation. Other relevant policy considerations relating to the NPPF, NPPG and Local Development Plan are considered in [ER 4.18.9 et seq.].
- 4.78. The ES Chapter 9 (supported by technical appendices) provides the Applicant's assessment for the Proposed Development's noise and vibration emissions from construction, operation and decommissioning, and its practical effects. Additionally, at DL6a an addendum to the ES Volume II contains further information on Noise and Vibration [ER 4.18.15]. The Applicant notes that there are no changes to the conclusions of the ES as a result of the additional information [ER 4.18.38]. The approach to sound level data from 2015 and 2016 sound surveys, undertaken as part of the Keadby 2 Power Station was used to inform assessments for the Proposed Development was agreed with NLC [ER 4.18.16].
- 4.79. The ES considers the nearest and potentially most sensitive receptors to the application site [ER 4.18.17 et seq.]. Initial surveys considered background sound levels, including Keadby 1 Power Station when it was not operational (background noise), and when in operation (ambient noise) [ER 4.18.18]. The Applicant's preferred approach for controlling construction noise and vibration is to reduce levels at source, where reasonably practicable and it proposes to reduce impacts at local noise sensitive receptors and ecological receptors, particularly with respect to activities required outside of core working hours. This is secured through mitigation to be included in the final CEMP and as outlined in the Framework CEMP (secured via Requirement 17 of the Order) [ER 4.18.22].
- 4.80. In terms of operation, the ES worst-case scenarios, produces a range of impact magnitudes from very low (Vazon Bridge) to high at (Keadby Grange and North Moor Farm) [ER 4.18.23]. These result in effects between negligible/minor adverse (not significant) to major adverse (significant). The Applicant considers the context for the location needs to be applied, with Keadby 1 Power Station being a continuously operating industrial source and taking account of the background sound levels measured for the Keadby 2 Power Station's ES [ER 4.18.23]. As such, it is considered that this is likely to mean that residents at all

noise sensitive receptors are already accustomed to an industrial sound source [ER 4.18.24]. Measures would be required to control or restrict activities during evenings/night-time so as not to exceed the Significant Observed Adverse Effect Level (SOAEL) or relevant noise limit to be agreed with NLC [ER 4.18.27]. The control of construction and operation noise and vibration is proposed to be secured by Requirements 28 and 29 of the Order [ER 4.18.35].

- 4.81. Construction traffic and changes in road traffic noise are considered in the ES. Access to the Proposed Development site, during construction and operation, will be via the existing access roads off the A18, currently used by construction vehicles for Keadby 2 Power Station. Construction Heavy Goods Vehicle (“HGV”) routes will be via M180 Junction 2, the A18 and then the A161, and construction deliveries will not be undertaken outside of core working hours unless agreed with the local planning authority [ER 4.18.28]. Whilst road traffic noise is predicted to increase during construction it is considered to result in a negligible effect (not significant) on noise sensitive receptors located along or close to the proposed construction traffic route, noise levels from construction traffic would therefore fall below the Lowest Observable Adverse Effect Level at all selected receptors [ER 4.18.29].
- 4.82. The ES considers vibration from construction impacts could have a substantive but temporary effect on the ability of migratory fish species to access breeding habitats in the River Trent catchment, and to return to the Humber Estuary. The Applicant proposes restricting piling to limited periods and to use a soft start (or similar) at the commencement of piling activities. It is considered that these restrictions would ensure that noise sensitive receptors would be similarly unaffected outside of working hours by piling activities [ER 4.18.32]. The Fish Management Plan secured by the Framework CEMP would mean that significant adverse effects on fish are unlikely as a result of direct and indirect barriers to migratory movements, additional controls for any cofferdam installation and removal, if required in the River Trent, are therefore secured as a requirement in the Order [ER 4.18.33].
- 4.83. The Applicant has agreed with NE that adverse effects on ecological receptors can be adequately mitigated through restrictions on when such activities can take place and their duration [ER 4.18.34]. Controls of construction noise and vibration are secured in requirement 28 of the Order [ER 4.18.35]. Decommissioning works are considered in the ES [APP-052] to be similar to, or less than construction work impacts and are not considered to be significant for the site during daytime working [ER 4.18.36]. However the ExA notes that the ES considers that up to major adverse (significant) effects may result from temporary works required to decommission plant and equipment within the water connection corridor [ER 4.18.36]. Decommissioning would require submission of a DEMP to the relevant planning authority for its approval and is secured by requirement 38 of the Order [ER 4.18.37].
- 4.84. NLC confirmed that it is satisfied with the information contained in the ES and updates provided by the Applicant addressed comments they had made [ER 4.18.39]. NLC sought core construction working hours and HGV deliveries during set hours in line with other local authorities to protect the amenity of those living in the vicinity [ER 4.18.40]. The ExA notes that whilst NLC highlighted its

preferred core construction working hours and HGV deliveries it acknowledged that additional restrictions could extend the construction period and delivery of the project, further the construction hours do not exceed those that were imposed on Keadby 2, and they align with other similar projects. Additionally, the Applicant has clarified the types and nature of activities to be undertaken in the start-up and shut down periods, which will not be intrusive [ER 4.18.50].

- 4.85. The ExA notes that it finds no evidence in the Examination to disagree with the Applicant, NLC or any other IP in regard to matters on noise and vibration [ER 4.18.52]. This includes when the Proposed Development is in operation as a whole (including the new CCUS technologies operating) which will be mitigated during the detailed design stage and controlled in requirement 29 (Control of noise – operation) in the Order [ER 4.18.52]. It further considers the ES and its appendices to be robust and sound [ER 4.18.53]. The illustrative design details of position, scale and appearance are considered to be appropriate and subject to requirements that will secure good design, minimise noise emissions and reduce noise transmission [ER 4.18.54 et seq.].
- 4.86. The ExA concludes that in the absence of an EP specific to the Proposed Development, it is considered appropriate to control the gross output capacity of the project, limited to 910 MW and this is secured in Schedule 1 of the Order. Subject to the mitigations secured in the Order, the ExA is satisfied that the Proposed Development will avoid significant adverse impacts on health and quality of life from noise and vibration and will mitigate and minimise other adverse impacts [ER 4.18.57]. The ExA considers the noise and vibration issues have been adequately addressed and meet the requirements of NPS EN1, EN-2 and draft NPS EN-1 and EN-2. These matters are considered to be neutral in the planning balance [ER 4.18.58].

The Secretary of State's Conclusion

- 4.87. The Secretary of State agrees with the ExA's conclusions that the assessments undertaken are appropriate for the Proposed Development in regard to noise and vibration. The Secretary of State agrees with the ExA's conclusion on mitigations secured through the Order and that these would meet the requirements of NPS EN1, EN2 and the draft NPS'. He agrees this matter is neutral in the planning balance.

Socio-Economic Effects

- 4.88. NPS EN-1 identifies that information on the likely significant social and economic effects of the development should be set out alongside how any likely significant negative effects would be avoided or mitigated and that cumulative effects should also be considered. It also requires the decision-maker to take into account the proposed development's potential benefits including its contribution to meet the need for energy infrastructure, job creation and any long-term or wider benefits. Paragraph 4.13.2 sets out that where the proposed project has an effect on human beings, the ES should assess these effects, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate [ER 4.19.2 et seq.]. The Energy White Paper has

a strong socio-economic component included, linked to the green industrial revolution [ER 4.19.8].

- 4.89. ES Chapter 16 and Appendix 16A (Population and Health Signposting) assesses the socio-economic effects of the Proposed Development during construction, operation and decommissioning and addresses effects on human health. NLC confirmed it is satisfied that the approach to the assessment is robust and agrees, based on previous delivery of large-scale projects in the area, that it is realistic that there will be a major short-term positive impact on employment created during the employment phase of the development [ER 4.19.34]. It recognises these will be temporary jobs, with a proportion drawn from outside of the local area [ER 4.19.35].
- 4.90. NLC considers that operational jobs created will be much lower in numbers, will have a minor positive long-term impact on the area and will result in additional spend to the area through accommodation, leisure use and local shops/services as well as the potential for additional work given to local supply chain companies. It considers local companies may also secure long-term contracts once the facility is operational [ER 4.19.35]. NLC advises the Proposed Development has the potential to support further growth of the construction and energy sectors in North Lincolnshire, recognised as a key growth sector in the North Lincolnshire Economic Growth Plan [ER 4.19.38], adding to GVA and providing an opportunity to address the highlighted skills shortages in this key sector [ER 4.19.36]. This is further supported by requirement 37 of the Order which secures the submission and implementation of an employment, skills and training plan [ER 4.19.37].
- 4.91. NLC considers the Proposed Development is in an area of current industrial activity and is not considered to have an adverse impact on the visitor economy of North Lincolnshire. The short-term and long-term beneficial economic impacts in terms of job creation and inward investment, and through the requirements of the Order will provide an opportunity to address skills shortages in a key sector strategically promoted for growth in this area. These beneficial impacts are considered to be of moderate importance [ER 4.19.39].
- 4.92. Network Rail (“NR”) confirmed it was assessing the impact on the Keadby Canal Junction level crossing and the Chapel Lane level crossing and that it had raised concerns due to the proposals seeking to authorise works either above or adjacent to NR’s operational railway and works [ER 4.19.40]. The Secretary of State issued a letter on 22 September 2022 with regards to the outstanding matters in relation to provisions within the Order. Outstanding matters at the close of the Examination are considered further in section 6 of this letter.
- 4.93. The UKHSA commented on operational amine emissions and limited details being available regarding the monitoring of air quality matters, including cumulative impacts and inconsistencies in the ES [ER 4.19.41 et seq.]. The ExA noted that these were satisfactorily addressed during the Examination with a SoCG with the UKHSA at deadline 7 that confirmed matters has been appropriately addressed and there were no matters not agreed between the parties [ER 4.19.43].

- 4.94. The ExA notes that no other IPs raised concerns in regard to socio-economic effects, including human health, or the assessments carried out by the Applicant on these matters [ER 4.19.44].
- 4.95. The ExA notes that it is satisfied that the ES has adequately demonstrated that the Proposed Development would provide economic benefits, including within the local area [ER 4.19.45]. It is further satisfied that necessary mitigation to avoid adverse effects would be appropriately secured through the relevant requirements of the Order [ER 4.19.47]. The ExA concludes that it considers the Proposed Development to be acceptable in terms of human health and would accord with NPS EN-1, NPS EN-5, draft EN-1 and EN-5, including those relevant policies in the Development Plan [ER 4.19.48].
- 4.96. The ExA notes that the operation of the Proposed Development would be regulated through an EP to control emissions and would comply with relevant legislation and policy, including NPS EN-1, EN-5, draft EN-1 and EN-5 in respect of human health. As such human health effects are a neutral consideration in the planning balance [ER 4.19.49].
- 4.97. The ExA concludes that the Applicant has adequately assessed the socio-economic effects of the Proposed Development and has provided sufficient evidence to support its conclusions on those effects and would support economic development in the area. The proposal is considered to accord with all relevant policies and is of moderate public benefit in the planning balance [ER 4.19.50].

The Secretary of State's Conclusions

- 4.98. The Secretary of State has considered the ExA's Report and agrees with its conclusions. He notes the positive benefits of the Development and the views expressed by NLC that it has the potential to support further growth of the construction and energy sectors in the local area and wider region. He agrees the necessary mitigation to avoid adverse effects on human health would be appropriately secured in the Order. The Secretary of State agrees with the ExA's conclusion that there is a moderate public benefit from the Development.

Traffic, Transport and Waste Management

Traffic and Transport

- 4.99. NPS EN-1 states that the transport of materials, goods and personnel to and from a project, during all project phases can have a variety of impacts on the surrounding transport infrastructure. Paragraphs 5.13.3-4 states that the Applicant should undertake a Transport Assessment ("TA") for any project likely to have a significant transport implication, and where appropriate the Applicant should prepare a Travel Plan [ER 4.20.2]. Mitigation measures can be used to reduce the impact on transport infrastructure and requirements should be considered to mitigate any adverse impacts [ER 4.20.3]. Other relevant policy considerations are listed including paragraph 111 of the NPPF which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative

impacts on the road network would be severe [ER 4.20.8]. Local Development Plan policies are also considered [ER 4.20.9 et seq.].

- 4.100. ES Chapter 10 considers the transport and traffic impacts of the Proposed Development during construction, operation and decommissioning. It also includes a TA and a Road Safety Audit – Stage 1 which assesses the traffic and transport implications of the Proposed Development [ER 4.20.16]. Additionally, at DL6a an addendum to Chapter 10 was also submitted [ER 4.20.17]. ES assessment methodology and significance criteria considers a worst-case scenario with construction commencing in 2029, with peak construction in 2031 with operation in 2033 and decommissioning activities commencing after 2058, assuming a 25-year operational life [ER 4.20.18].
- 4.101. The TA states that all HGV construction traffic will access/depart the Proposed Development site from the M180 Junction 2 via the A161 and the A18. Based on the baseline traffic flows Table 10.12 of ES Chapter 10 and the construction timetable (taking 2031 as peak construction), this indicates additional traffic flows will result, including HGVs, on the observed roads leading to the Proposed Development [ER 4.20.21]. In terms of effects during construction on severance, pedestrian amenity, fear and intimidation, highway safety and driver delay the Applicant classified these all as negligible (not significant). Overall, the impact on the Strategic Road Network is classified in the TA as not significant [ER 4.20.22]. A SoCG was completed with the Applicant and National Highways, where it is agreed the residual effects of construction traffic on the Strategic Road Network, including all road sections and junctions, are anticipated to be negligible and thus not significant [ER 4.20.65]. It also agreed that mitigation measures are appropriately secured in the Order including a Construction Traffic Management Plan (“CTMP”) (Requirement 25) and a Construction Worker Travel Plan (“CWTP”) (Requirement 26) [ER 4.20.66]. The ExA is satisfied that the agreed requirements contain suitable measures to ensure that construction traffic, delivery and servicing traffic and operational traffic would be suitably managed and controlled [ER 4.20.66].
- 4.102. The Applicant’s proposed change request, accepted into the Examination increases the importation of soil during the enabling works phase, which would be transported via HGV using the access from the A18. In the worst-case scenario, material movements would take place over a two-month period during the initial enabling and preparation phase of construction, this would increase the number of HGVs during this phase to 784 two way per day (an increase of 160 two-way per day on the original ES figures). With HGV movements related to potential spoil waste removal, the volume of HGVs is predicted to be at its maximum 828 daily two-way vehicle movement for two months during the initial phase. As such the proposed change is not considered to alter the peak months of construction traffic impacts and effects [ER 4.20.27]. The Applicant considers that overall the effects of construction traffic on all road links and junctions within the study area are negligible adverse (not significant) [ER 4.20.28]. A SoCG completed with NLC agreed that the proposed changes are minor in scale and appropriate in nature in the context of the overall development, and their scale and limited impacts are controlled acceptably in the Order [ER 4.20.64].

- 4.103. Operational effects are considered in the ES [ER 4.20.29 et seq.]. The vehicle numbers generated would be considerably lower than experienced during the construction period. The overall effects during operation and maintenance are therefore considered to be negligible adverse (not significant) [ER 4.20.33]. During decommissioning vehicle numbers are expected to be much lower than those experienced during the construction period, and it is considered that the percentage increase in traffic would be not significant [ER 4.20.34].
- 4.104. Impacts on the surrounding highway network would be controlled during the construction phase, including HGVs arriving or departing from the site would travel to/from the west via the A18, A161 and onwards to the M180 Junction 2. NLC would secure a Temporary Traffic Regulation Order is likely to be proposed by the appointed contractor to reduce speed on the A18 in the vicinity of the Proposed Development access from the A18 [ER 4.20.35]. Additionally, a range of mitigation measures are proposed including the CWTP secured in the Order, that includes measures to control routing and to encourage construction workers to adopt modes of transport which reduce reliance on single occupancy [ER 4.20.36]. National Highways agree that mitigation measures are appropriately secured in the Order [ER 4.20.66]. The TA concludes that the traffic and transportation impacts associated with the Proposed Development are temporary and relatively minor and would therefore not result in severe highway capacity or safety problems [ER 4.20.38].
- 4.105. The ExA sought clarification from the Applicant in the Examination on whether the ES included the best representative data available, and that assessments and assumptions were robust, and transport management measures were adequate/appropriate [ER 4.20.58 et seq.]. The Local Highway Authority confirmed that overall in its opinion the approach adopted within the TA was robust and provides a worst-case scenario for traffic flows [ER 4.20.60]. The ExA concluded that having considered the evidence provided by the Applicant and NLC [ER 4.20.58 et seq.], it concurs with this position and that the TA is considered to be robust and fit for purpose [ER 4.20.61].
- 4.106. Chapter 19 of the ES considers the cumulative and combined effects, in relation to transport and traffic (including transportation of waste) and does not identify any significant effects on roadside receptors. Furthermore, in terms of air quality and noise assessments, it does not identify any significant effects on sensitive receptors located close to the road network, as such effects on roadside properties, due to road traffic and related air/noise emissions are not anticipated to be significant [ER 4.20.47].
- 4.107. The ExA notes the points of disagreement raised by NR, a landowner, in relation to new rights to enable access over plots 28 and 29 as shown on Land Plans and set out in the Book of Reference. These rights are required to facilitate Work No. 8A and Work 9B providing routing for construction traffic, potential maintenance or improvement of the existing track and use of a compound to the south of the railway [ER 4.20.67]. A SoCG between the parties has agreed a number of measures, including conformity with the Framework CTMP controlled by requirement 25 of the Order [ER 4.20.68]. The ExA notes that bearing these factors in mind, including the main point of disagreement in relation to land and rights belonging to NR, subject to the matter of Protective Provisions being

resolved appropriately, it sees no reason why traffic and transport associated with the Proposed Development would have any adverse effect on the railway or detriment to NR's undertakings [ER 4.20.69]. The Secretary of State issued a letter on 22 September 2022⁴ this is considered further in section 6 of this letter.

- 4.108. Relevant representations were made during the Examination which refer to issues with alleged closure of public highways. At DL7 the Applicant provided a response to the points raised [ER 4.20.71]. The ExA notes that highway related issues were agreed with NLC, and that Access and Rights of Way Plans submitted as part of the Application, using publicly available information on the status of the highway network in the area, includes roads within and adjoining the site, private roads and public highways [ER 4.20.72]. Having considered the representations and the responses from the Applicant, and the completed SoCG with NLC, the ExA sees no reason to disagree with the Applicant's position and is not persuaded the objections identify any specific issues in regard to the Proposed Development or any specific procedural related elements of the Development Consent Order [ER 4.20.73]. The Secretary of State has further considered the representations received following the close of the Examination and in response to his consultation letters from Mr John Carney on 2nd November and 10th November (including attachments). The Secretary of State accepts the ExA's conclusion on agreed matters with parties and does not consider further consultation is required on these issues.
- 4.109. The ExA notes in respect of waterborne transportation, the only area of concern relates to how the Proposed Development would generally impact on the navigation of the Stainforth and Keadby Canal/River Trent [ER 4.20.76]. Following discussions with the Canal and River Trust in relation to concerns raised, at DL5 the Applicant submitted an updated navigational risk assessment which assessed the use of the Railway Wharf for Abnormal Indivisible Loads deliveries and associated navigational risk, that included a range of suitable mitigation measures to reduce any risk to a level as low as reasonably practicable and which could be suitably managed by risk controls that include engagement and collaboration with Associated British Ports Humber (ABP Humber) and the Canal and River Trust, and DML conditions [ER 4.20.78]. included in the Order at Schedule 10 and Schedule 13. At the close of the Examination the Canal and River Trust withdrew its objections and confirmed it was satisfied with the Protective Provisions within the draft Order and it had agreed a side agreement that sets the future working relationship between the parties [ER 4.20.80]. The updated navigational risk assessment further addressed comments by Associated British Ports, so as to address risks to navigation and safety within the River Trent [ER 4.20.81]. The ExA notes that the parties agreed in a SoCG, the approach taken by the Applicant [ER 4.20.81]. A completed SoCG with the MMO including navigational risk was also confirmed [ER 4.20.82].
- 4.110. The ExA concludes it finds the Applicant's ES Chapter 10 on Traffic and Transportation, supplemented by the ES Addendum, together with the updated Navigational Risk Assessment, to be robust and sound, including in relation to waterborne transportation, making appropriate recommendations for mitigation,

⁴ <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/keadby-3-carbon-capture-power-station/?ipcsection=overview>

incorporated within the Protective Provisions and Deemed Marine License (“DML”) of the Order [ER 4.20.83]. From the evidence before the ExA it finds no reason to disagree with the Canal and River Trust, ABP Humber and the MMO that subject to appropriate mitigations secured in the Order, the impact of the Proposed Development on navigation/navigational safety, taking account of any obstruction to Keadby Lock (including from waterborne transportation), would be acceptable [ER 4.20.84]. It further considers that it sees no reason to disagree that the conclusions to the likely residual effects identified in Chapter 10 of the ES would remain as reported (i.e. not significant) following the change request [ER 4.20.85].

- 4.111. Overall the ExA concludes that in terms of traffic and transport, including waterborne transportation, navigation and navigational safety of the Stainforth and Keadby Canal/River Trent, subject to the imposition of requirements, protective provisions and, other controls in the DML, it does not consider there to be any unresolved matters [ER 4.20.86]. The ExA is satisfied that the ES meets the requirements of NPS EN-1 and draft NPS EN-1 and that no significant traffic or transportation effects are likely to arise. The ExA acknowledges there would be traffic impacts, as well as some impacts on navigation and navigational safety in both the Stainforth and Keadby Canal and River Trent, but the controls and management measures in the Order would be sufficient to mitigate any negative impacts to an acceptable level. The overall impact is considered to be neutral in the planning balance [ER 4.20.91].

The Secretary of State’s Conclusions

- 4.112. The Secretary of State has considered the ExA’s conclusions and agrees that with the requirements in the Order and other controls, he is satisfied that the traffic and transport impacts of the Proposed Development would meet the requirements of NPS EN-1 and draft NPS EN-1 and that no significant traffic or transportation effects are likely to arise from the Proposed Development. He further agrees with the ExA that the overall impacts of traffic and transport to be neutral in the planning balance.

Waste Management

- 4.113. NPS EN-1 states that the decision-maker should consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the construction, operation and decommissioning of proposed development. It should be satisfied that any such waste will be properly managed, waste can be dealt with appropriately by waste infrastructure and adequate steps have been taken to minimise the volume of waste arisings [ER 4.20.12]. Other relevant policies include the Waste Management Plan for England and Waste Strategy for England that considers waste minimisation and promotes resource efficiency [ER 4.20.14 et seq.].
- 4.114. The Applicant submitted a Waste Management Technical note which identifies the waste and quantities that would be generated during the construction, operation and decommissioning of the Proposed Development and the waste treatment capacity of the area [ER 4.20.39]. Prevention of contamination as part of the decommissioning will be a specific requirement of the EP for the operation

of the Proposed Development [ER 4.20.42 et seq.]. A DEMP will be produced within the period specified at the time of the cessation of operation and agreed with the EA as part of the EP and sites surrender process [ER 4.20.44]. The Technical note identifies regional and national waste management capacity and considers the significance of effects associated with estimated sources and volumes of waste arisings. The consequence of movements of construction waste will be adequately controlled through the CTMP secured in the Order. The Technical note does not identify any significant effects arising from the movement of waste on sensitive receptors in terms of air quality, emissions or noise [ER 4.20.45]. It is not anticipated there will be significant impacts on waste management infrastructure and no significant indirect effects have been identified [ER 4.20.46]. The ExA notes that NLC made no direct reference to waste management, other than highlighting their preference for no open fires on the site in the Framework CEMP [ER 4.20.49]. The Secretary of State notes that the CEMP must be submitted to and, after consultation with NE and EA, approved by the local planning authority and is satisfied this matter can be considered further if required.

- 4.115. No significant matters or concerns in respect of waste management issues were raised by IPs [ER 4.20.87]. The ExA was satisfied that the Applicant adequately responded to requests for additional information at DL5 [ER 4.20.89] and concludes that it is satisfied that operational wastes have been adequately considered in the Applicant's Technical Note, as supplemented by its responses to questions during the Examination. The ExA considers that the approach to waste management generally is acceptable and that a CEMP, set out in requirement 17 of the Order will be adequately secured [ER 4.20.90].
- 4.116. The ExA is satisfied that the Proposed Development would not result in any significant effects arising from waste generated during its construction, operation or decommissioning and would meet legislative and policy requirements, including in NPS EN-1 and draft NPS EN-1 and there are no disbenefits which weigh against the Proposed Development in this regard. As such waste management effects are considered to be a neutral consideration in the planning balance [ER 4.20.93].

The Secretary of State's Conclusions

- 4.117. The Secretary of State has considered the ExA's Report and notes that no significant concerns in relation to waste management were raised by IPs. The Secretary of State agrees with the ExA that, with the mitigation measures in the CEMP secured by Requirement 17 of the Order, the approach to waste management is acceptable. Consequently, he agrees this matter is neutral in the planning balance.

Water Quality/Resources and Flood Risk/Resilience

- 4.118. NPS EN-1 states that planning policy on development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas at highest risk [ER 4.21.2]. Paragraphs 5.7.13 to 5.7.16 of EN-1 sets out the need for Proposed Development to pass a sequential test, then an exception

test if development is considered in a high-risk flood zone (“FZ”) area [ER 4.21.3 et seq.]. For the exception test to be passed it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site-specific Flood Risk Assessment (“FRA”) to demonstrate that the development will be safe for its lifetime, taking into account the vulnerability of its users and without increasing flood risk elsewhere [ER 4.21.5]. The EA’s Flood map for planning identifies that the majority of the Proposed Development site and surrounding environs are located within FZ3, with the exception of a small section of the new permanent access from the A18, which is in a FZ2 [ER 4.21.32]. North Lincolnshire Strategic Flood Risk Assessment (“SFRA”) defines the development site as being in the tidal FZ3a. It is not defined as in FZ3b (land where water has to flow or be stored in times of flood) as the site does not act as a functional floodplain as it benefits from the existing EA maintained flood defences along the River Trent which prevent natural flooding from occurring [ER 4.21.33]. As such a sequential and exception test are both required [ER 4.21.34].

- 4.119. NPS EN-2 states that where a project is likely to have effects on water quality or resources, the applicant should undertake an assessment and that measures will be put in place to avoid or minimise adverse impacts of abstraction, discharge of cooling water and on water quality and resources [ER 4.21.8]. NPS EN-4 considers the impacts of the construction of pipelines on water resources [ER 4.21.9]. The NPPF and NPPG require local policies to manage flood risk from all sources taking account of advice from the EA and other relevant flood risk management bodies, such as the Lead Local Flood Authority and Internal Drainage Board [ER 4.21.10 et seq.]. Relevant FRAs are listed as the North Lincolnshire Preliminary FRA, North and North East Lincolnshire SFRA and North Lincolnshire Council’s Local Flood Risk Management Strategy [ER 4.21.28].
- 4.120. ES Chapter 12 assesses the potential effects of the construction, operation (including maintenance) and decommissioning of the Proposed Development on surface water, flood risk and drainage. A FRA was submitted as ES Appendix 12A which was subsequently revised and updated in November 2021. The ES cross refers to ES Chapter 13 (Geology, Hydrogeology and Land Contamination) and ES Chapter 19 (Cumulative and Combined Effects). The Applicant also submitted a Water Flood Directive report and an updated Navigational Risk Assessment at DL5 [ER 4.21.29].
- 4.121. The Applicant considers that both the sequential test, including consideration of alternative sites, and the exception test are met [ER 4.21.32 et seq.]. In terms of the exception test the Applicant states that two elements of the criteria are demonstrated for the Proposed Development, including the wider sustainability benefits to the community as outlined in the Planning Statement and no reasonable alternative sites in FZ1 or FZ2 were identified [ER 4.21.36 et seq.]. The FRA is considered to demonstrate that the Proposed Development would remain safe during its lifetime and would not increase flood risk elsewhere, subject to the exceptions in relation to tidal sources [ER 4.21.38 et seq.], where mitigation is identified [ER 4.21.37]. NLC confirmed the submitted FRA and Drainage Strategy is acceptable in that it identifies pluvial flood risk and provides

for various mitigation measures to be addressed in the surface water drainage strategy [ER 4.21.68]. Further NLC considers that subject to requirement 12, which necessitates the submission and agreement of a detailed surface water drainage strategy, the impact of the proposals on flood risk and drainage will be adequately mitigated [ER 4.21.69].

- 4.122. The EA confirmed it had no objection in principle to the Proposed Development, but further information was sought during the Examination process [ER 4.21.70]. This included an amendment to Schedule 2 requirement 14 to secure finished floor level for Work Nos. 1A and 1C to secure occupant's safety in the event that a breach to the tidal river Trent defence were to occur. The EA confirmed the draft CEMP is satisfactory, and the final CEMP would be secured in the Order [ER 4.21.71]. The EA completed a SoCG with the Applicant including details of hydrology and water resources, including compliance with the Water Framework Directive, a revised and updated FRA with mitigations and details of water abstraction, including assessments of effects and details of the Water Abstraction License submitted by the Canal and River Trust. Furthermore, the SoCG sets out the EP permit variation application was submitted to the EA in July 2021 and that a subsequent permit variation may be required [ER 4.21.84]. At DL7a the ExA notes that the EA only maintained an objection to Compulsory Acquisition and Temporary Possession matters [ER 4.21.72], this is considered in section 6 of this letter.
- 4.123. Keadby with Althorpe Parish Council raised a number of concerns with regards to the water environment and flood risk, issues which the ExA considered in the Examination [ER 4.21.73]. The Applicant submitted a SoCG which aimed to agree the approach taken with the Parish Council however the ExA noted this was not progressed by the close of the Examination [ER 4.21.74]. MCA requested consultation on works in the marine environment [ER 4.21.75] and the MMO focussed on changes to the Order [ER 4.21.76] which were agreed in a SoCG with the Applicant [ER 4.21.90]. NE also sought further information in regard to water quality impacts to Humber Estuary SAC/SPA due to cooling water discharge [ER 4.21.77]. The completed SoCG agreed water quality effects on protected Sites in the HRA have been adequately assessed and that requirement 13 and 17 of the Order would secure measures to reduce water pollution impacts during the construction phase of development [ER 4.21.92]. No other IPs raised concerns on water quality/resources or flood risk/resilience, or the assessment carried out by the Applicant [ER 4.21.79]. The Applicant also completed a SoCG with the Inland Drainage Board ("IDB") which agreed mitigation measures specified in the Order [ER 4.21.88].
- 4.124. The ExA notes the representations of John Carney in relation to water abstraction alteration to lock gated level at Keadby. The Applicant responded at DL7 and whilst it considered it was unclear what this refers to in relation to the Order, it considers their FRA demonstrates that the Proposed Development would remain safe during its lifetime and would not increase flood risk elsewhere [ER 4.21.93]. In addition the ExA notes that findings of the FRA and the summary of Canal Water Abstraction Assessment in relation to water efficiency measures proposed and includes a negligible impact on the flood risk of the canal as a result of the proposed works [ER 4.21.94]. The ExA further notes the FRA has been agreed

with the EA, and NLC as the Local Lead Flood Authority, and that the IDB accept the conclusions of the FRA. The ExA notes that it has no reason to disagree with the Applicant's position in this regard [ER 4.21.95] and it finds no reasons from the evidence entered into the Examination to disagree with the EA, NLC or the IDB in regard to matters concerning water quality/resources or flood risk/resilience [ER 4.21.97].

- 4.125. From evidence entered into the Examination, having regard to the sequential and exception tests, the ExA is satisfied that the Proposed Development is acceptable in terms of its location and in regard to all matters related to water quality/resources and flood risk/resilience [ER 4.21.98].
- 4.126. The ExA is satisfied that the FRA was appropriately undertaken and meets the requirements of the NPS and that mitigations identified in the FRA and ES are sufficient and would be secured by requirement 14 and 15 of the Order [ER 4.21.99].
- 4.127. The ExA is satisfied that water quality/resources and flood risk/resilience issues arising from the Proposed Development have been adequately addressed and that requirements 12, 13, 15, 17 and 38 of the Order secure mitigation measures [ER 4.21.100]. The ExA concludes that the Proposed Development would accord with relevant legislation and policy requirements, including those of NPS EN-1, EN-2, EN-4 draft NPS EN-5 and the Water Environment Regulations 2017 and that these matters are neutral in the planning balance [ER 4.21.101].

Submissions to the Secretary of State after the close of the Examination

- 4.128. The Secretary of State received late representations from Mr John Carney following the close of the examination period. The Secretary of State has considered these representations and has taken the view that these late representations do not lead the Secretary of State to disagree with the ExA's conclusions.

The Secretary of State's Conclusions

- 4.129. The Secretary of State has considered the ExA's Report and the Applicant's Flood Risk Assessment. The Secretary of State agrees with the ExA that the risk and potential impacts of flooding have been considered appropriately and that the mitigation measures proposed in the Order are appropriate. The Secretary of State considers that the requirements of the Energy NPSs and the NPPF (2021) have been properly taken into account by the ExA. The Secretary of State agrees these matters are neutral in the planning balance.

5. Findings and Conclusions in Relation to Habitats Regulations Assessment

- 5.1. 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 or projects, to have a significant effect on a European site as defined in the Habitats Regulations.
- 5.2. The Convention on Wetlands of International Importance 1971 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites defined in the Habitats Regulations.
- 5.3. 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 Proposed Development if he has ascertained that it will not adversely affect the integrity of a protected site. This process is collectively known as a Habitats Regulations Assessment (“HRA”). The preparation of the 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 the Proposed Development is considered alone: Humber Estuary SAC, Humber Estuary SPA and Humber Estuary Ramsar site [ER 5.2.42]. No likely significant effects in combination with other plans or projects were identified. It was then necessary to consider whether the Proposed Development alone, would have an adverse effect on the integrity of those protected sites. An Appropriate Assessment (“AA”) 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.
- 5.4. The impact pathways which were assessed in the AA were: habitat disturbance and modification (construction / decommissioning); visual and noise / vibration disturbance (construction / decommissioning); deterioration of water quality (construction / decommissioning); entrapment of lamprey species (construction); introduction of Invasive Non-Native Species (“INNS”) (construction / decommissioning); and atmospheric pollution (operation).
- 5.5. The Applicant proposed standard mitigation measures to minimise the risk of water pollution to water courses, as well as an Invasive Species Management Plan to mitigate the introduction and spread of INNS, both of which are set out within the CEMP. The Proposed Development includes Selective Catalytic Reduction abatement of NO_x and use of acid wash to control NH₃, both of which are required to ensure Best Available Technique associated emission levels are met in accordance with the Environmental Permit. With regard to potential adverse effects on lamprey species, soft piling methods for piling activity are secured via the DML to mitigate disturbance and the Landscape and Biodiversity Management and Enhancement Plan sets out mitigation measures for entrapment to be provided within a Fish Management Plan. Provisions to avoid the wintering bird period for cofferdam installation are provided for in the detailed design of the Proposed Development, as secured via the Order.

- 5.6. In the SoCG between NE and the Applicant, NE agreed with the Applicant's conclusions that an adverse effect on site integrity can be excluded from the Humber Estuary SAC, SPA and Ramsar site from the Proposed Development alone and in combination with other plans or projects [ER: 5.4.45].
- 5.7. The Secretary of State notes that the ExA concluded, subject to the mitigation measures secured in the Order, an adverse effect on the integrity of the Humber Estuary SAC, SPA and Ramsar site from the Proposed Development when considered alone and in combination with other plans or projects can be excluded from the impact-effect pathways assessed [ER: 5.5.5].
- 5.8. The Secretary of State's HRA concluded that, in line with the conclusions of the ExA and NE, subject to the mitigation measures secured in the Order the Proposed Development will not result in an adverse effect on the integrity of any protected sites alone or in combination with other plans or projects.

6. Consideration of Compulsory Acquisition and Related Matters

- 6.1. The Secretary of State notes that the Applicant is seeking powers for the Compulsory Acquisition (“CA”) and temporary possession (“TP”) of land.
- 6.2. The Planning Act 2008, together with related case-law and guidance, provides that compulsory acquisition can only be granted if certain conditions are met. Under section 122 of the Planning Act 2008 compulsory acquisition may only be authorised if:
- the land is required for the development to which the consent relates, or
 - it is required to facilitate or is incidental to that development; or
 - it is replacement land which is to be given in exchange for the Order land under sections 131 or 132 of the Planning Act 2008; and
 - there is a compelling case in the public interest.
- 6.3. In connection with this:
- the land required to be taken must be no more than is reasonably required and be proportionate;
 - there must be a need for the project to be carried out;
 - all reasonable alternatives to compulsory acquisition have been explored;
 - the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
 - they are satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those affected.
- 6.4. The ExA notes that none of the land included in the CA request is National Trust Land, Common Land or Open Space. However, there are Crown interests within the Order limits, which are shown on the Crown Land Plans [ER 7.2.2].

The Applicant’s Case

- 6.5. The Applicant’s case for seeking CA and TP powers is set out in the Statement of Reasons (“SoR”). The Applicant has sought to pursue negotiations to acquire the relevant interests by agreement. As part of the Applicants submissions during the Examination, regular updates were provided with affected persons, with agreement being reached to acquire the necessary land and rights with a number of them [ER 7.5.19].

Alternatives

- 6.6. The Applicant considered alternatives [ER 7.5.16 et seq.] including a ‘do nothing’ scenario and the consideration of alternative sites and solutions during the evolution of the Proposed Development and design process [ER 7.5.18]. It found none of these alternatives would provide comparable compelling benefits in the public interest to the Proposed Development and were less desirable having regard to environmental and technical issues, including space available and the

presence of existing infrastructure [ER 7.5.18]. In conclusion the Applicant considers that all reasonable alternatives to CA have been explored (paragraph 14.1.5 SoR). For the reasons set out in the SoR it is considered that the position on CA and TP is justified [ER 7.5.20].

Availability and adequacy of funds

- 6.7. The ExA notes that the Applicant submitted a Funding Statement with the Application [ER 7.5.21]. During the Examination clarity on CA costs and specific matters was sought by the ExA to demonstrate that all funding resources necessary to deliver the Proposed Development will be available when required to enable timely delivery. The Applicant confirmed its parent company SSE maintains a strong balance sheet and credit rating to support investor, counter party and market confidence to underpin future development of the business [ER 7.5.26]. The ExA notes that no Interested Parties challenged the Applicant's Funding statement or its responses to the ExA's further questions in regard to this matter [ER 7.5.27]. The ExA concluded based on the information provided, it is satisfied that the necessary funds are available to the Applicant [ER 7.5.27]. The ExA notes that the Order includes provisions in Article 45 which requires the Secretary of State to approve a guarantee or alternative form of security for compensation that may be payable pursuant to the Order before the provisions for CA can be exercised [ER 7.5.28].

Objections received to the CA and TP proposals

- 6.8. During the Examination the ExA notes Affected Parties ("AP") that had objected to CA and TP proposals [ER 7.6.1 et seq.]. The ExA was updated throughout the Examination on how matters were progressing with parties, and it was satisfied that protective provisions ("PPs") had been agreed with Canal and River Trust, NGET/NGG and Northern Powergrid which offer the necessary protection for APs. The ExA concluded that there were no outstanding issues or circumstances which would indicate that the CA powers sought in relation to the affected plots should not be granted [ER 7.6.4].

Objections outstanding at the close of the Examination

Messrs Strawson and Severn, via their Agent Pollock Associates

- 6.9. The Applicant seeks CA/TP powers over a number of plots. As set out in the Book of Reference ("BoR") and Land Plans, permanent acquisition is sought in relation to plots 40 and 57 and new rights over a number of plots set out at Schedule 6 [ER 7.7.2]. Schedule 8 (Land of which TP may be taken) of the Order, specifies which plots TP applies to and confirms it is being sought in relation to an access and construction worksite [ER 7.7.3]. Messrs Strawson and Severn's objections regarding CA/TP included that electrical connection works are not necessary (Work No. 3B), alleging that the Applicant's position that the northern route was the only route is incorrect; that the Applicant has not allowed sufficient time for negotiations and disputes, and that insufficient regard has been given to the impact of a proposed solar scheme [ER 7.7.4]. From the evidence submitted into the Examination the ExA is satisfied that the Applicant allowed sufficient time for negotiations and that by the close of the Examination, no further information

on a proposed solar scheme had been drawn to its attention [ER 7.7.5]. It also considered that there is significant uncertainty that the Proposed Development would interfere with the solar farm [ER 7.7.6]. The ExA considers the CA/TP powers sought, including new rights, in respect of plots, are required for the Proposed Development and are either required for the specific works identified on the Works Plans or are necessary to facilitate or are incidental to those works. Similarly, the ability to lay, install, use and maintain the underground electrical cables, related infrastructure and emergency access route is an integral part of the Proposed Development and the requirements of s122(2) of the PA2008 are met [ER 7.7.8]. On balance, the ExA considers the loss in regard to this AP would be limited and clearly outweighed by the public benefits, and the Proposed Development's inclusion of carbon capture technology [ER 7.7.9]. The ExA concludes there is a compelling case in the public interest for including CA/TP powers sought within the Order and that conditions in s122(3) of the PA2008 are satisfied [ER 7.7.10].

The Environment Agency ("EA")

- 6.10. The EA maintained a holding objection in relation to its land interests at the end of the Examination, in regard to CA/TP matters the Applicant sought in respect of Article 8 of the Order and in respect of landholdings or interests in plots of land which will be affected by the Proposed Development [ER 7.7.12]. Having considered all representations made in respect of CA/TP, by both the EA and the Applicant, as well as the details set out in Land Plans and the Book of Reference ("BoR"), the ExA concludes that the CA/TP powers sought are required to facilitate and/or are incidental to the Proposed Development and that the powers sought meet the conditions set out in s122(2) of the PA2008 [ER 7.7.18].
- 6.11. Whilst it accepts potential impacts on the EA's land, the ExA considers the need for the development is established by the NPS and EN-1 advises that this should be given substantial weight when considering applications for development consent under the PA2008 [ER 7.7.20]. In the ExA's view this outweighs the potential impact on the EA's land interests and there is a compelling case in the public interest for acquiring the rights sought. The ExA concludes the test in s122(3) is met [ER 7.7.21]. The EA confirmed at DL7 and DL7a that all the outstanding issues were capable of resolution by agreement and that it would continue to work on finalising the required agreements [ER 7.7.22]. The ExA concluded it is satisfied that subject to the completion of agreements in respect of plots 3,10, 26, 30, 31, 46, 47, 52, 53, 54 and 80a, that the inclusion of CA/TP powers would not result in serious detriment to the carrying on of the EA's undertaking and is satisfied that the tests set out in s127 and s138 of the PA2008 are met [ER 7.7.25].
- 6.12. The Secretary of State issued a letter on 22 September 2022 with regards to the outstanding matters relating to land interests and side agreements. The EA responded that in respect of the affected land as follows:
- Plots 3, 10, 26 and 30
- 6.13. The Applicant provided a draft Deed of Variation in respect of the above plots which is under review with the EA's solicitor

Plot 52

- 6.14. Heads of Terms have been agreed, however the exact details of the water abstraction pipe to be laid cannot be finalised until the Applicant completes negotiations with the Canal and River Trust.

Plots 31, 46, 47, 53 and 54

- 6.15. The use of land is subject to discussions between the Applicant and contractors and cannot be progressed until details are received.

Plot 80a

- 6.16. The Applicant has provided a Unilateral Undertaking to replace land within the EA's ownership to provide replacement car parking. The precise details are subject to negotiations with the Canal and River Trust. However the EA is satisfied that the Undertaking will protect their interests in this respect.

The Secretary of State's conclusions on the Environment Agency plots

- 6.17. The Secretary of State wrote to the EA in his second letter dated 21 October 2022 for any updates on progress. The EA confirmed that their legal team continue to work with the Applicant's solicitor to progress the draft Deeds of Variation in respect of Plots 3, 10, 26 and 30. Matters in respect of Plots 31, 46, 47, 52, 53, 54 and 80a remain as set out in their response to the Secretary of State's first letter of 22 September 2022.
- 6.18. The Secretary of State noted that the ExA states that the matters were capable of resolution by agreement [ER 7.7.23] and that overall the agreements, once concluded, should provide the necessary confidence to ensure use of the CA/TP powers are appropriately applied to those required to carry out the development, whilst not resulting in serious detriment to the EA's undertaking.
- 6.19. The Secretary of State has carefully considered the ExA's views on outstanding issues, and has taken account of additional information provided to him by the parties following his letter of 22 November 2022. On 5 December 2022 a final response was received from the EA which confirmed that a Deed of Undertaking has now been completed with the Applicant, which provides the necessary commitments required in relation to resolving the holding objection. Accordingly, EA confirms that their objection is withdrawn to the application. The Secretary of State has considered the representations of both parties and is satisfied that there will not be serious detriment to the carrying on of the Environment Agency's undertaking.

Network Rail Infrastructure Ltd ("NR")

- 6.20. NR's outstanding objections relate to the CA/TP powers being sought over land and rights belonging to them [ER 7.7.30]. The Applicant is seeking to exercise rights on plots 28 and 29 (of which NR is the freehold owner of this airspace) that relates to an existing purpose-built bridge over the railway. NR's preferred position requests Protective Provisions ("PPs") which includes a restriction on the exercise of compulsory powers over land rights belonging to NR [ER 7.7.30].

Having considered the parties' submissions carefully the ExA considers that the rights sought are necessary to facilitate, construct and operate the Proposed Development and the test in respect of s122 (2) is met [ER 7.7.37]. The ExA is persuaded that PPs provided by NR would ensure a more appropriate level of protection in terms of its land, apparatus and statutory undertaking [ER 7.7.42].

- 6.21. Subject to these PPs being included in the Order the ExA agrees that the CA/TP powers in respect of plots 28 and 29 would not result in serious detriment to the carrying on of NR's undertaking. The ExA concludes that the inclusion of powers in respect of the extinguishment of rights is necessary for carrying out the development [ER 7.7.44]. The ExA considers the tests set out in s127 and s138 of the PA2008 are met and that the public benefits from additional energy generation outweighs any loss or detriment from the creation of these rights compulsorily and that there is a compelling case in the public interest for CA powers to be included in respect of the identified plots and that the test of s122(3) is also met [ER 7.7.44 et seq.].
- 6.22. The Secretary of State issued a letter on 22 September 2022 requesting updates on land interests and any side agreements. NR reiterated its objections to the Applicant's refusal to include a restriction on the exercise of CP powers over land and rights belonging to NR within the draft PPs and provided its preferred draft PPs. NR also set out that it is in negotiation with the Applicant on a Framework Agreement to regulate the relationship between the parties and is negotiating a Deed of Variation and Licence in order to grant the required rights to facilitate delivery of the Proposed Development. NR considers these Agreements will ensure there is no requirement for CA powers over their operational land. The Secretary of State has considered the position of both parties and, after considering the ExA's conclusions [ER 7.7.26 et seq.], the Secretary of State agrees with the ExA's recommendation that the PPs provided by NR would ensure a more appropriate level of protection in terms of its land, apparatus, and statutory undertaking.

Crown Land

- 6.23. The BoR identifies plots subject to Crown interests [ER 7.8.4 et seq.]. The Applicant provided a response from the Crown's agent into the Examination, dated 9 May 2022, which summarises the position and was reiterated at the close of the Examination [ER 7.8.7 et seq.].
- 6.24. In respect of relevant works, Work No. 4B - Water Connection Corridors – Water Abstraction Option and Work No. 5 the Crown's agent confirmed that no further agreement is required for the purposes of the Order for the outfall and river abstraction rights.
- 6.25. In regard to Work No. 10B (Waterborne Transport Offloading Area) and related Work No. 10C the Crown's agent confirmed that subject to consideration being agreed, the principle of the use of the Railway Wharf does not raise concerns [ER 7.8.8]. However by the close of the Examination no appropriate Crown Authority had been obtained by the Applicant [ER 7.8.9].

- 6.26. The Secretary of State issued a letter on 22 September 2022 with regards to the outstanding matters in relation to Crown Land and/or Crown rights. This issue remained unresolved and he issued a second letter dated 21 October 2022 requesting an update from both The Crown Estate and the Applicant. The Crown Estate confirmed in its letter dated 4 November 2022 that formal consent under section 135(2) of the PA2008 for the inclusion in the final Order of Articles 27 and 28 to the extent that they apply to Crown land (forming part of the Crown Estate) will be obtained. On 24 November 2022 the Crown Estate confirmed their consent to the compulsory acquisition of the third party interests in Plots 157, 159 and 160 for the purpose of S135(1) of the PA 2008 and they confirmed their consent to relevant provisions applying in relation to Plots 154, 156, 156a, 157, 159, 160, 172 and 172a for the purpose of section 135(2) of the PA 2008. The conditions for this consent were some changes to Article 32 of the DCO, which are incorporated in the DCO and are mentioned at section 9 of this letter, and the Commissioners being consulted further if any variation to the DCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the Act. The Secretary of State has considered this and does not consider any further consultation is necessary.

Overall conclusions on CA and related matters

- 6.27. The Secretary of State is satisfied that the outstanding issues in respect of Compulsory Acquisition, Protective Provisions and Temporary Possession powers as considered to be necessary by the ExA are resolved between the parties as set out above. He is further satisfied that formal consent under section 135(2) of the PA2008 has been obtained from The Crown Authority.
- 6.28. The Secretary of State is satisfied that the powers sought by the Applicant are necessary and it is appropriate to include them in the Order.

7. The Secretary of State's Consideration of the Planning Balance

- 7.1. Where National Policy Statements have effect section 104 of the Planning Act 2008 requires the Secretary of State 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.
- 7.2. All nationally significant energy infrastructure developments will have some potential adverse impacts. In the case of the proposed development, most of the potential impacts have been assessed by the ExA as having not breached NPS policy or those contained in the emerging draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The ExA concludes that there are no adverse impacts of sufficient weight, either on their own or collectively, to argue against the DCO being made [ER 6.3.7].
- 7.3. The ExA considers the proposed Development would result in a number of public benefits, including its contribution to meeting the identified need for additional generating capacity and support for the local economy. It would also be a major investment in low carbon electricity generation, providing 910 MW of dispatchable generation with carbon capture and compression equipment installed from the outset. The ExA considers it represents a considerable commitment to removing barriers to carbon capture and deploying related infrastructure and would be a significant contribution towards the urgent national need for low carbon electricity generation established in NPS EN-1 and draft NPS EN-1 [ER 6.3.5]. The Secretary of State attributes substantial weight to meeting this need. The ExA notes the BNG arising from the Proposed Development will enhance biodiversity and assist in enhancing ecological and nature conservation effects and the effects are a positive consideration in the planning balance [ER 4.13.95]. In terms of socio-economic effects the Proposed Development would be of moderate public benefit [ER 6.2.38]. The Secretary of State notes that the ExA attributes neutral weight to a number of issues including air quality [ER 4.12.59], climate change [ER 4.14.64], geology and land contamination [ER 4.16.35], landscape and visual amenity [ER 4.17.53], noise and vibration [ER 4.18.58], traffic and transport [ER 4.20.91], waste [ER 4.20.93], and water quality/resources and flood risk/resilience [ER 4.21.101]. The Secretary of State agrees with these conclusions.
- 7.4. In relation to heritage matters, the Secretary of State notes the conclusions of the ExA in relation to the significance of heritage assets and the level of harm to each designated and non-designated asset and accords that harm considerable importance and weight. But in light of the public benefits of the proposed Development, the Secretary of State considers that matters relating to cultural heritage do not provide a justification not to make the Order.

Secretary of State's Conclusion and Decision

- 7.5. The Secretary of State has considered the matters discussed in the ExA's Report together with the ExA's view that the harm to designated and non-designated heritage assets are outweighed by the substantial benefit from the provision of

energy to meet the need identified in NPS EN-1 and the draft NPS EN-1 [ER 6.3.7]. The Secretary of State agrees with the ExA's overall conclusion that taking all the factors into account, including the adverse impacts he has identified, he considers they are not of sufficient weight either on their own or collectively, to argue against the DCO being made.

- 7.6. For the reasons given in this letter the Secretary of State considers that there is a strong case for granting development consent for the Proposed Development. Given the national need for the development, as set out in the relevant National Policy Statements, the Secretary of State does not believe that this is outweighed by the adverse impacts set out above. The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent, including the modifications set out in section 9. In reaching his decision, the Secretary of State confirms regard has been given to the ExA's Report, the LIRs submitted by North Lincolnshire Council ("NLC"), the National Policy Statements, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

8. Other Matters

Human Rights Act 1998

8.1. The ExA notes that the draft Order would engage Article 1 of the First Protocol, Article 6 and Article 8 of the European Convention on Human Rights as given effect in the Human Rights Act 1998 [ER 7.9.1 et seq.]. The ExA is satisfied that in relation to the inclusion of Compulsory Acquisition and Temporary Possession powers in the recommended Order, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest [ER 7.8.7]. The Secretary of State has considered the potential infringement of human rights in relation to the proposed Development. He has no reason to believe 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 the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender reassignment; disability; pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 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 considered potential equality impacts during the Examination and within the report [ER 7.9.1 et seq.]. The ExA acknowledges the infringement of rights through Compulsory Acquisition and Temporary Possession powers however accepts that there is no evidence that the proposed development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not, or that there has been any lack of regard to the needs of the Equality Act 2010. The ExA is satisfied therefore that, in relation to the inclusion of Compulsory Acquisition and Temporary Possession powers in the Recommended Order, that there is no evidence that the proposed Development would not accord with Section 149 of the Equality Act 2010.
- 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 Keadby 3 Carbon Capture Power Station 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

- 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 a requirement for the UK to reduce net carbon emissions by 2035 from 78% below the 1990 baseline. 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 does not consider that the amendment to the Climate Change Act 2008 has lessened the need for development of the sort represented by the Keadby 3 Carbon Capture Power Station which is, therefore, still in accordance with the National Policy Statements. Operational emissions 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.

The British Energy Security Strategy

- 8.9. The Secretary of State notes the support for new Carbon Capture Usage and Storage ("CCUS") technology in the British Energy Security Strategy.

9. Modifications to the draft Order

9.1. The ExA set out its recommended changes to the Order in its report [ER 8.3.19]. Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the draft Order:

- Amended the definition of “undertaker” for clarity.
- Amended the definition of “maintain” in Article 2(1) so that it covers activities that do not require any materially new or materially different environment effects, without requiring those to be worse, than those assessed in the environmental statement.
- Article 7 has been amended to make specific provision for the transfer of the whole of the deemed marine licence and to omit paragraph (5)(iv) to require the consent of the Secretary of State to transfer the benefit of the Order to a company within a group company.
- Article 21 has been amended to make clear the powers under paragraph (1) are restricted to either Work No 4A or Work No. 4B and the limitations in paragraphs (2) and (4) are made clearer.
- Article 21 has been amended to make clear the limits of the powers in paragraph (1), in particular, to make clear that the powers can only be used in relation to Work No.4A or 4B.
- Article 25(5) has been omitted, for consistency with Schedule 7.
- Minor amendments have been made to Article 32 (crown rights), as a condition of The Crown Estate’s consent, as explained at paragraph 6.27 above.
- Article 42(5)(a) has been amended to add a definition of “legible in all material respects” for clarity.
- Amended Requirement 33(2) in Schedule 2 for clarity.
- The definition of “Northern Powergrid” in Part 7 to Schedule 10 has been amended for clarity.
- Notice periods have been amended to ensure reasonable time for consideration/action and for consistency with other DCOs. Article 7(9) has been amended to allow at least fourteen days, rather than five days, between the date of the receipt of the notice and the transfer of benefits of the provisions of the Order. Article 27(3) has been amended to allow not less than twenty-eight, rather than fourteen days, before entering on and taking temporary possession of land under that article. Schedule 9 paragraph 3(3) has been amended to allow the relevant planning authority ten, rather than five, business days to issue a consultation to the requirement consultee after receipt of the application.

9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to confirm with the current practice for statutory instruments and changes in the interests of clarity and consistency and to achieve consistency with other DCOs.

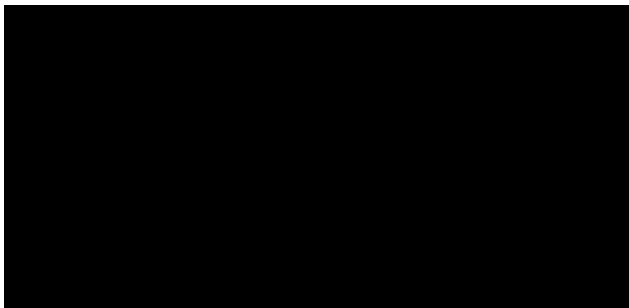
10. Challenge to decision

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

Yours sincerely



David Wagstaff
Deputy Director, Energy Infrastructure Planning

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

Under section 118 of the Planning Act 2008, an Order granting or refusing 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/keadby-3-carbon-capture-power-station/?ipcsection=overview>

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).

Glossary of Terms

Abbreviation	Reference
Rs	Requirements
AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
AEoI	Adverse Effects on Integrity
APs	Affected Person
BAT	Best Available Techniques
BoR	Book of Reference
CA	Compulsory Acquisition
CCP	Carbon Capture Plant
CCR	Carbon Capture Ready
CCGT	Combined Cycle Gas Turbine
CEMP	Construction Environmental Management Plan
CHP	Combined Heat and Power
DEMP	Decommissioning Environmental Management Plan
DL*	Deadline*
EAL	Environmental Assessment Level
EP	Environmental Permit
ES	Environmental Statement
GHG	Greenhouse Gas
HEO	Historic Environment Officer
LBMEP	Landscape and Biodiversity Management and Enhancement Plan
LIR	Local Impact Report
NGC	National Grid Carbon Ltd
NG	National Grid
NH ₃	Ammonia
NLC	North Lincolnshire Council
NO ₂	Nitrogen dioxide
NO _x	Oxides of nitrogen

NPPF	National Planning Policy Framework
NPS	National Policy Statement
OMH	Open Mosaic Habitat
Proposed Development	Keadby 3 Carbon Capture Power Station
PP	Protective Provisions
Ramsar Convention	Ramsar Convention on Wetlands of International Importance
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SSSI	Site of Special Scientific Interest
WFD	Water Framework Directive