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Customer Services: 0303 444 5000
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Your Ref:

Our Ref: EN010038

Date: 13 December 2013

Dear Sir/Madam

Planning Act 2008 (as amended) – Section 89(3) and the Infrastructure Planning (Examination Procedure) Rules 2010 - Rule 9, Rule 8(3) and Rule 13

Application by C.GEN Killingholme Limited for an Order Granting Development Consent for the North Killingholme Power Project

Notice of procedural decision and variation to the examination timetable; notice of date, time and place for any further hearings; notice of second round questions

I write to inform you of a procedural decision and variation to the examination timetable, to notify you of the date time and place for any further hearings and to attach the Examining Authority's (ExA) second questions.

Procedural decision and variation to the examination timetable

The ExA has made a procedural decision under s.89(3) of the Planning Act 2008.

The ExA has inserted two further deadlines into the examination timetable. The first is a deadline of **Friday 24 January 2014** for the receipt by the ExA of any proposals by the applicant for changes to the order limits. These should be accompanied by any consequential proposed changes to the land plans, Book of Reference and Statement of Reasons.

The second is a deadline of **Friday 28 February 2014** for the receipt by the ExA of any comments on any submitted proposals by the applicant for changes to the order limits.

The setting of these deadlines will serve both to ensure that all affected persons and interested parties have the opportunity to comment on any changes to the order limits and to ensure that affected person who wish to attend the Compulsory Acquisition hearings in February 2014 (see below) will have an opportunity to appraise themselves of any changes before the hearing takes place.

Date, time and place for any further hearings

The timetable issued for the examination of the above proposal timetable on 20 September 2013 identified that the ExA would issue a notification of the date, time and place for any further hearings on 7 January 2014. The notification below fulfils that commitment.

The following hearings will be held at the **Ashbourne Hotel, Vicarage Lane, North Killingholme, DN40 3JL.**

Date and Time	Hearing Details
Tuesday 4 February 2014 8.30 am registration 9.00 am start	Issue specific hearing on the draft DCO, including protective provisions
Wednesday 5 February 2014 8.30 am registration 9.00 am start	Issue specific hearing on the Habitats, Ecology and Nature Conservation
Thursday 6 February 2014 8.30 am registration 9.00 am start	Issue specific hearing on Transport and Traffic
Tuesday 11 February 2014 8.30 am registration 9.00 am start	Compulsory acquisition hearing
Wednesday 12 February 2014 8.30 am registration 9.00 am start	Compulsory acquisition hearing s.127 hearing if time permits
Thursday 13 February 2014 8.30 am registration 9.00 am start	Compulsory acquisition hearing if required s.127 hearing

In accordance with Rule 14(3) of the Infrastructure Planning (Examination Procedure) Rules 2010, any oral representations made at hearings should be based on representations previously made in writing by the particular participant.

Should the consideration of the issues take less time than anticipated, I may conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. If there are additional matters to be dealt with or there are submissions that take a considerable amount of time at any hearing there may be a need to continue the session for longer on the day or adjourn the hearing and continue at a subsequent sitting.

An agenda for each hearing may be published on the project pages of the planning portal website shortly before commencement of the hearings, therefore I would advise all interested parties to regularly check the website

(<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/north-killingholme-power-project/>).

I would be grateful if parties wishing to attend any hearings and/or the accompanied site visit could advise the case team in writing (email or post) by **12.00 noon on 27 January 2014** indicating:

- (i) which hearing(s) you wish to attend,
- (ii) if you wish to speak at the hearing(s).

Please provide your interested party reference number in any communication and mark it for the attention of the North Killingholme Case Team.

I remind all interested parties of the deadline of on or before 19 February 2014 for receipt by the ExA of written summaries of cases put orally at the hearings listed in this letter.

Notice of second round questions

The timetable issued for the examination of the above proposal timetable on 20 September 2013 identified that the ExA would issue a second round of written questions on or before 13 December 2013.

As the ExA, I now write to you to provide the detailed questions which the ExA has decided to ask (attached at **Annex A**). We request that you provide your response to these questions by **7 January 2014**.

If your submission exceeds 1500 words please ensure that you also provide seven unbound paper copies to the postal address above by the deadline.

If you have any further queries, please do not hesitate to contact us.

Yours faithfully

Kelvin MacDonald

Kelvin MacDonald MCIH FRTPI
Lead Member of the Panel of Examining Inspectors

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

Annex A

EN010038 North Killingholme Power Project

Examining Authority's Second Written Questions

13 December 2013

COMPULSORY ACQUISITION

CA2/01

The Applicant

Provide a table showing the current definitive position with reference to each plot affected as to:

- a) whether agreement has been reached with parties with an interest in the land
- b) the position of, and expected completion date of, any negotiations where agreement has not been reached;
- c) whether the intention, following any agreement, is to no longer seek compulsory acquisition powers in the DCO in respect of that plot.

CA2/02

The Applicant

Where agreement is shown in the list provided in answer to CA2/01, provide a joint statement as to this between yourselves and the relevant affected person(s).

Purpose for which compulsory acquisition may be authorised

CA2/03

The Applicant

Provide a statement for all the plots listed in the Book of Reference, stating whether the order limit shown is the final order limit which the applicant wishes the Examining Authority to consider in their report and recommendations to the Secretary of State.

If the applicant is proposing to change the order limits, the applicant's attention is drawn to the procedural decision to set a deadline for submissions to change the order limits promulgated in the covering letter to these questions.

CA2/04

The Applicant

Your Written Summary of Oral Evidence given at the Compulsory Acquisition hearing (para. 3.1.5) states that:

It must be emphasised that C.GEN has no intention of exercising the powers it seeks in this DCO in respect of all the land over which it seeks such powers. Instead it will exercise those powers only over the narrow corridors it requires to provide the electrical grid connection, the gas connection, the cooling water line and the coal conveyor (together with the already clearly defined operations areas). Combined with a suitable mechanism for ensuring that any powers of compulsory acquisition which are granted to C.GEN over land which is not eventually required for the actual delivery of the project, this need for certainty of delivery provides an adequate justification for grant of powers of compulsory acquisition over the areas of land sought.

- a) Define and describe this 'mechanism' and approach with reference to statute, guidance and case law where relevant.
- b) State how the use of this mechanism serves to provide the Secretary of State with the re-assurance that all the land over which CA powers are sought within the order limits is required for the development to which the development consent relates; is required to facilitate or is incidental to that development and that there is a compelling case in the public interest for the land to be acquired compulsorily.

CA2/05

The Applicant

Centrica Storage Limited and Centrica KPS Limited

Comment on the Written Summary of Oral Representations made by Centrica Storage Limited and Centrica KPS Limited at the CA hearing on 21 and 22 November 2013 and, in particular, on para 3.7:

Centrica are a willing party in these negotiations and has already discussed terms for the provision of an option. Given the forgoing this opportunity must now be actively pursued by C.GEN. The outcome of these negotiations cannot overcome the flaw in the C.GEN case for compulsory acquisition because there is now a more effective and efficient route for the cable connection which negates the need to acquire the identified Centrica land and frustrate its operations.

Provide a statement on the current position with those negotiations.

CA2/06

The Applicant

In your response to CA21(b) you give two examples of where such your choice of wide corridors is designed to reduce interference with other parties:

3. ... if Able UK were to commence construction, C.GEN would not wish to risk interference with those works and would, due to the flexibility provided by the

proposals, be able to move its construction into an area which Able does not wish to occupy.

4. Similarly, if at any stage SMart Wind were finally to indicate the layout and design parameters for its works, the width of corridors allows C.GEN flexibility, C.GEN can then be flexible in the siting of its own works to allow SMart Wind's works to be accommodated. Wider corridors enhance C.GEN's ability to accommodate SMart Wind in particular.

Explain further the thinking behind this approach of seeking to minimise interference with or accommodate other developments.

CA2/07

The Applicant

As part of your response to question CA19 you state (para 2.1) that:
the PA2008 does not expressly provide for the acquisition of such rights as a wayleave.

Schedule 5 of the 2008 Planning Act does allow for the 'creation, suspension or extinguishment of, or interference with, interests in or rights over land compulsorily or by agreement'.

State why you consider that this excludes the use of wayleaves.

CA2/08

The Applicant

As examples, Centrica states in its Written Representation (3.34 and 3.35) that:
Whilst C.GEN has set out a case that the Project as a whole is in the public interest because it will assist in meeting energy needs through low carbon generation, it has not provided a justification for why the compulsory acquisition of the land proposed for electrical grid connection route is in the public interest, and why this would outweigh the private losses that will result from this compulsory acquisition and extinguishment of existing rights.

and SMart Wind, in its Written Summary of Oral Representations made at the Compulsory Acquisition Hearing stated that:

14. SMart Wind emphasised to the Ex. A that the Option site had been identified to locate the onshore converter stations for the Hornsea Projects after careful consideration. This Option site is now almost entirely under the threat of compulsory acquisition in terms of the Order and as such SMart Wind is seeking to protect the interests of the Hornsea Projects, which are under real threat in terms of their deliverability.

Comment on Centrica's and SMart Winds submissions, above, and set out the justification for permitting a nationally significant infrastructure project which claims to be in the public interest but which may have the effect of reducing the performance and effectiveness of other projects also acting in the public interest

CA2/09

Able Humber Ports

You state in your Written Representation (WR 5.5) that:

The vagueness and extent of the powers that C.GEN is seeking will stymie development on Able's land and will impact upon the delivery of the consented Logistics Park.

Provide particularised evidence for this assertion.

CA2/10

The Applicant

Your answer to question CA03 (1.6.3+4) states that: C.RO Ports Limited is excluded from compulsory powers under Art 16(5) DCO; and that Fortis Bank Limited is the mortgagee for C.RO and is excluded from the compulsory powers under Art 16(5) DCO.

Explain why Art 16(5) of the draft DCO refers to 'the Simon Group Limited' and its mortgagee and not to C.RO Ports Limited.

CA2/11

The Applicant

Are 'C.RO Ports Limited', 'C.RO', and 'C.RO Ports Killingholme Limited' the same company?

CA2/12

The Applicant

Your answer to CA10iii (4.2 and 4.4) states that:

The Electrical Grid Connection land represents (shown on the plan at CA10/APP1) a corridor within which the final route for the Electrical Grid Connection is to be located.

and that:

The Gas Connection land represents ... two corridors within which the final route for the Gas Connection is to be located. ... The final route will be determined following detailed geo-technical surveys as part of the detailed design stage for the Gas Connection.

Will the final route and width of the gas and grid connector corridors be determined in sufficient time to allow all parties to make representations on the revised corridor?

CA2/13

The Applicant

Your answer to CA14(d)1 states that:

C.GEN's emerging preference is for a Gas Connection via Spur 1B. As described in these response to Written Questions, the alternatives are not appropriate for the Project.

Para. 1.8 of the *Statement of Reasons* (Doc. 4.1) states that:

C.GEN is seeking powers of compulsory acquisition over Gas Connection Routes 1 and 2. These are not being promoted as options, whereby the selection of either is to be explored through the examination or left to the decision maker. Each of the Connection Routes are required in order to give reasonable certainty that the required Gas Connection can be delivered.

- a) Explain the apparent divergence in these statements in respect of whether or not these two routes are alternatives and/or options.
- b) Are the powers potentially being sought in respect of both?

CA2/14

The Applicant

You have applied for compulsory acquisition of plots to form an area of ecological mitigation shown on, for example, the map of the Principal Project area in green.

At the Compulsory Acquisition hearing there was some discussion about the current status of this land following the granting of permission to the Able Logistics Park.

Are you now considering a change in the order limits to exclude this land?

CA2/15

The Applicant

Para. 29 of the Written Summary of Oral Representations made by SMart Wind Limited states that:

the Applicant will either be able to acquire rights for this alternative route [the 'clockwise or 'Eastern' route] by negotiation with Centrica KPS and E.ON or using the mechanisms for compulsory acquisition contained in the Electricity Act 1989 once it has obtained its generation licence, which is readily available.

Comment on this suggestion.

CA2/16

The Applicant

Centrica plc

Para 3.2.1 of the applicant's Written Summary of Oral Representations made at the Compulsory Acquisition hearing states that:

... there is a potential alternative route for the electrical grid connection which would enable some areas of land currently required for compulsory acquisition to be avoided. However, this route will only become a genuine alternative in the event that an appropriate commercial agreement can be reached with Centrica plc. At present no such agreement, and therefore no such alternative, exists.

Provide a joint statement on the position on any discussions in relation to this corridor.

CA2/17

The Applicant

Para 3.5.4 of the Environmental Statement (Doc. 6.1) states that:

A direct connection with either of the Feeders will also require the construction of a new AGI (again, not part of this DCO Application).

The Book of Reference (Doc. 4.3) does not refer to the use of any of the plots for the construction and operation of an AGI.

- a) State whether you are applying for compulsory acquisition powers on plots to be used to site one or more AGIs.
- b) If yes, state which plots.

Building Proximity Distances

CA2/18

The Applicant

National Grid Electricity Transmission Plc and National Grid Gas Plc

Provide a joint statement on the progress in agreeing separation distances following the meeting on 2 December 2013 referred to in para. 3.4 of the Written Summary of Oral Representations made by National Grid Electricity Transmission Plc and National Grid Gas Plc at the DCO and CA hearings on 20, 21 and 22 November 2013.

CA2/19

The Applicant

Able Humber Ports

Comment on the statement by Mr Dixon at the Compulsory Acquisition hearing on 22 November that the proposed development of Able Logistics Park may well be impacted by the gas connector pipeline by some 20m.

Set out the results from any further discussions that have been held on this issue.

Special Category Land

CA2/20

The Applicant

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 states that Part 5 specifies land—

- (i) the acquisition of which is subject to special parliamentary procedure;
- (ii) which is special category land;
- (iii) which is replacement land;

You have included a large number of plots – some 120 - in Part 5 of the Book of Reference (Doc. 4.3).

- a) State for each plot, or group of plots sharing the same rights to be acquired and interested parties, in which category or categories (i) – (iii), above, the plot falls;
- b) State with reference to the definitions in s.19(4) of the Acquisition of Land Act 1981, for each plot, or groups of plots, falling within category (ii) above, whether the land is common land, a fuel or field garden allotment, or open land;
- c) State for each plot, or groups of plots, included in category (iii), above, for what plots is this land a replacement.

CA2/21

The Applicant and

Each affected person in relation to plots listed in Part 5 of the Book of Reference.

With reference to s.131 and 132 – as applicable - of the 2008 Planning Act (as amended by the Growth and Infrastructure Act 2013) and Annex A of the DCLG *Guidance related to procedures for the compulsory acquisition of land* (Sept. 2013), provide **a joint statement** with each affected person for each plot, or group of plots sharing the same rights to be acquired and interested parties, listed in Part 5.

This statement should set out which sub-section or sub-sections of s.131 or s132 apply and whether the tests in the relevant sub-sections are met, justifying your conclusions, in order to inform the Examining Authority's recommendations to enable the Secretary of State to issue a certificate under s.131(3) and s.132(2).

Crown Land

CA2/22

The Applicant

You have included three plots in Part 4 of the Book of Reference (doc. 4.3). In your Written Summary of Oral Representations made at the Compulsory Acquisition hearing (para. 2.2.2) you state that:

As to a section 135 application, C.GEN's case is that because the interest to be compulsorily acquired (in the absence of agreement) is to be derived from ABP's interest, and not directly from the Crown, no application under section 135 is required.

- a) Provide legal submissions as to why s.135 does not apply in this case;
- b) Provide legal submissions as to why s.135(2) does not apply in this case in respect of, for example, Work No. 3a.
- c) Clarify i) the nature and ii) the current owner(s) of the leasehold estate/ you refer to in paragraph 2.2.3. of your Written Summary of Oral Representations made at the Compulsory Acquisition hearings;
- d) Explain why you feel it necessary to refer to the definition of 'land' in the Interpretation Act 1978 when there is a definition of 'land' in s159 of the Planning Act 2008.

Updated Book of Reference and Land Plans

CA2/23

The Applicant

Provide an up-dated version of the Book of Reference taking into account your responses to the questions above.

CA2/24

The Applicant

Provide an up-to-date version of the land plans:

- a) highlighting any proposed changes to the order limits.
- b) delineating plots which is land or is subject to rights to which s.131 or s132 of the 2008 Planning Act apply.

CA2/25

The Applicant

Provide any additions/amendments to the Statement of Reasons considered necessary to explain and justify any changes in the Book of Reference and land plans.

<p>NOTE to the Applicant: You may delay your response to questions CA2/23, /24 and /25 until the deadline of 24 January 2014.</p>

The Resource Implications of the Proposed Scheme

CA2/26

The Applicant

What is the position of Simon Group Limited re C.Ro Ports Killingholme and in relation to other companies in the company structure that you provided as part of your answer to CA38. The Simon Group is not shown in that company structure.

CA2/27

The Applicant

Your answer to CA37 states that C.RO Ports Killingholme Limited is an affiliated company of C.GEN Killingholme Limited.

State what 'affiliated' means in this context. C.RO Ports Killingholme Limited is not shown in the company structure that you provided as part of your answer to CA38.

CA2/28

C.RO Ports Killingholme Limited

Your response to the first round of written questions states that:

C.RO Ports Killingholme Limited and C.GEN are both in the same group of companies

What is your understanding of the legal relationship between the two companies?

CA2/29

The Applicant

Which company is ultimately responsible for the delivery of this project – in (a) operational and (b) financial terms?

- a) Is there a named individual with overall responsibility within the Group for the delivery of the project?
- b) To which company is any such individual currently contracted?

CA2/30

The Applicant

The Funding Statement (Doc. 4.2) (2.5) states that:

The assets of C.GEN S.A. comprise a number of subsidiaries whose assets are mainly interest bearing deposits placed with banks or other companies.

- a) Provide a full group structure including the ultimate parent referenced in para. 2.2 of the Funding Statement and indicating net assets of each company and the percentage of equity owned;
- b) Which group company or companies will be providing the funding for the project applied for?

CA2/31

The Applicant

Para 2.7 of the Funding Statement (Doc. 4.2) states that:

These funds - together with debt financing - will meet the capital expenditure for the cost of the Project, the cost of acquiring land for the Project which is identified in the DCO (compulsorily or otherwise), and any compensation payable as a result of the Project and in accordance with the DCO.

- a) Set out the estimates of the capital cost of the project, including and showing the cost of professional fees and construction costs, that evidenced this assertion.
- b) Set out the estimates of the cost of acquiring land (compulsorily or otherwise) that evidenced this assertion.
- c) Set out the estimates of the cost of any compensation that evidenced this assertion.
- d) Explain why this assertion has only included the cost of acquiring land and not of acquiring rights.

CA2/32

The Applicant

Para 2.7 of the Funding Statement (Doc. 4.2) states that:

Through Boisclair S.A. and C.GEN S.A., C.GEN has the ability to procure the financial resources necessary to fund the works to be authorised by the DCO, subject to final Board authority.

- a) Set out the mechanism and timing for gaining final Board approval;
- b) Set out the mechanism by which funds for the power project will be secured through ring-fencing or other means in the budget and expenditure of the company or companies named in your response to CA2/32(b), above.

CA2/33

The Applicant

Para. 3.1 of the Funding Statement (Doc. 4.2) states that:

It is not currently anticipated that any claims for blight will arise. Should such claims arise as a consequence of the Application, the costs of meeting claims that are upheld will be met from the sources of funding described above.

- a) Set out the basis for the assertion that it is not anticipated that claims for blight will arise;
- b) Set out the estimates of the cost of any claims for blight, that evidenced the assertion that any such costs will be met from the sources of funding described above.

CA2/34

The Applicant

Para. 2.7 of the Funding Statement (Doc. 4.2) states that the project will be financed through the companies own funds and debt financing:

- a) Describe the method(s) by which such finance will be raised;
- b) Provide a breakdown of the proposed capital structuring of the project, clearly identifying the relative proportions of debt, mezzanine debt, equity and any other forms of finance;
- c) What proportion of the elements shown in your response to b), above, will be provided from group resources and what proportion will be provided from external sources?
- d) If external sources are to be used, what steps have been taken to confirm with the providers their willingness to provide that finance?
- e) Indicate the terms on which such finance is to be provided including the period over which any debt will be repayable;
- f) Set out the estimates of the cost of interest and/or other debt servicing charges over that period and state whether these have been taken into account in making the assertions in paras. 2.7, 2.8 and 3.1 of the Funding Statement.

CA2/35

The Applicant

In your response to CA38 you state that a parent company guarantee can be provided by C. GEN SA. Indicate the nature of the relationship between C. GEN SA and any other subsidiary which might be called and/or relied upon should that guarantee be called.

Protective Provisions

CA2/36

The Applicant

Able Humber Ports Limited

Associated British Ports

C.Ro Ports Killingholme

E.on UK Plc

E.on UK Gas

Heron Wind Limited

North East Lindsay Drainage Board

North Lincolnshire

Optimus Wind

Shell UK

Smart Wind

State the position in respect of any draft and/or negotiations on protective provisions.

CA2/37

The Applicant

Anglian Water Services Limited

The Environment Agency

Network Rail Infrastructure

A draft Protective provision is included in Schedule 8 of the revised draft DCO submitted by the applicant following the DCO hearing on 20 November 2013.

Is this an agreed draft?

If not, state the position on any negotiations and any likely timetable for concluding negotiations.

CA2/38

The Applicant

Centrica Storage Limited and Centrica KPS Limited

Provide a joint statement on the negotiations on the amended protective provisions provided by Centrica Storage Limited and Centrica KPS Limited as Annexure A to their Written Summary of Oral Representations made by Centrica Storage Limited and Centrica KPS Limited at the CA hearing on 21 and 22 November 2013.

CA2/39

The Applicant

National Grid Electricity Transmission Plc and National Grid Gas Plc

Provide a joint statement on the negotiations on the points raised in relation to the draft protective provisions in paras. 2.1 to 2.11 of the Written Summary of Oral Representations made by National Grid Electricity Transmission Plc and National Grid Gas Plc at the DCO and CA hearings on 20, 21 and 22 November 2013.

CA2/40

British Telecommunications plc

The applicant has applied for authorisation to extinguish relevant rights and/or remove relevant apparatus under s.138 of the 2008 Planning Act.

Please provide a representation giving your views on this proposal.

In making this representation, you are reminded that s.138 applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a right of way, or a right of laying down, erecting, continuing or maintaining apparatus, or there is on, under or over the land relevant apparatus.

CA2/41

The Applicant

Explain, with reference to the description of a book of reference contained in Reg. 7 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, the status of Schedule 1 in the Book of Reference (Doc. 4.3).

Section 127 of the 2008 Planning Act

The applicant has made applications for a certificate under s.127 of the 2008 Planning Act in respect of:

To the Secretary of State for Energy and Climate Change

- Centrica KPS Ltd
- Centrica Storage
- E.on UK Plc.
- E.on UK Gas
- Heron Wind Limited
- National Grid Gas
- National Grid Electricity Transmission plc.
- National Grid Property Holdings Limited
- Optimus Wind
- SMart Wind

To the Secretary of State of Environment, Food and Rural Affairs

- Anglian Water Services
- The Environment Agency

To the Secretary of State for Transport

- Associated British Ports
- Network Rail Infrastructure

The process of examining applications for s.127 certificates is undertaken in parallel with, but separately from, the examination of the application for an order for development consent.

Kelvin MacDonald has been appointed as the s.127 Examiner by the relevant Secretaries of State.

s127/01

The Applicant

Set out your understanding as to whether the land or interests are held by the undertaker, in respect of which a certificate is applied, for the purposes of its undertaking.

s127/02

The Applicant

Set out your view as to whether the relevant plots or acquisition of a right over the relevant plots by the creation of a new right:

(i) can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or

(ii) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking;

(iii) if a right can be purchased without serious detriment to the carrying on of the undertaking, or (iv) whether any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

What evidence do you have to support these conclusions?

s127/03

The Applicant

Are you aware of the undertaker's views on the above two questions and whether the undertaker objects to the acquisition of the land or rights and on what grounds. Can you provide evidence of the undertaker's views where available.

s127/04

The Applicant

Have you had discussions with the undertaker concerned regarding the acquisition of its land or rights over it?

If 'yes', provide evidence of these discussions.

s127/05

The Applicant

Please state whether you consider that s.138 of the Planning Act 2008 also applies.

S127/06

The Applicant

Comment on the statement by SMart Wind Limited in para. 13 of the Written Summary of Oral Representations made by SMart Wind Limited that: *A section 127 application is not required in respect of SMart Wind's interest*

and state whether the applicant wishes the s.127 Examiner to continue to examine the s.127 application in respect of SMart Wind Limited.

s127/07

Anglian Water Services
Associated British Ports
Centrica KPS Ltd
Centrica Storage
E.on UK Plc.
E.on UK Gas
The Environment Agency
Heron Wind Limited
National Grid Gas
National Grid Electricity Transmission plc.
National Grid Property Holdings Limited
Network Rail Infrastructure
Optimus Wind
SMart Wind

Please provide any representations you wish to make on the application by C.Gen Killingholme Ltd for a s.127 certificate.

If you have already made relevant representations or written representations, do you wish to supplement these with any representations specifically addressing the application for a s.127 certificate

Please state in that representation whether or not you are a statutory undertaker for the purposes of s.127 referring, as necessary to s.127(8) and to the letters of delegation from the relevant Secretary of State (to be found in the 'Guidance' section of the National Infrastructure pages of the Planning portal website).

Please state in that representation whether or not the land referenced in the applicant's application for a s.127 certificate:

- a) has been acquired by statutory undertakers for the purposes of their undertaking, and
- b) is used for the purposes of carrying on the statutory undertakers' undertaking, or an interest in the land is held for those purposes.

Please state in your representation whether you consider that s.138 of the 2008 Planning Act also applies in your case. s.138 applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a right of way, or a right of laying down, erecting, continuing or maintaining apparatus, or there is on, under or over the land relevant apparatus.

In making representations, bodies should bear in mind that the relevant Secretary of State is required to be satisfied under s.127 that:

where land is to be acquired:

(a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or

(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking. (s127(3))

or, where a right is to be acquired

(a) the right can be purchased without serious detriment to the carrying on of the undertaking, or

(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them. (s127(6))

DESIGN, LAYOUT AND VISIBILITY

DA2/01

The Applicant

CABE's Comments – Provide a tabulated response to each of CABE's comments.

DA2/02

The Applicant

Architectural Design – The Examining Authority fully appreciates the process constraints which exist in the relationship of elements of the project. This is the case with almost all industrial developments of a similar scale and need not constrain the production of innovative, radical, expressive architecture suited to the significance of what may become the first IGCC plant in the UK, setting a standard for future development. There is a strong functionalist tradition of fine industrial architecture to tap into, including the Battersea Power Station, Brynmawr Rubber Factory and the first Fylingdales Early Warning System. More recent examples are given in CABE guidance (Design Council – CABE, *A design-led approach to infrastructure*, November 2012)

As confirmed in CGen's hearing summary, attention can be directed to three main areas:

- Refining imagery
- Modifying existing proposals
- Radical attention to the design, or to selected areas of the design

Describe your intentions in each of these areas and provide evidence of progress. The Examining Authority welcomes further information of this nature.

DA2/03

The Applicant

Design and Photomontage Imagery – CGen's hearing summary notes at 4.1.1 that it will be augmenting information including views from/of Thornton Abbey Station and The Brick and Tile Kiln.

What other information will be included?

DA2/04

The Applicant

Lack of Specificity in Indicative Drawings – As suggested in 4.2.1 of CGen's hearing summary, provide a firmer sense of the architectural opportunities available in the indicative drawings.

DA2/05

The Applicant

Landscaping – What opportunities for habitat enhancement and encouraging wildlife, will be taken in the landscape design?

DA2/06

The Applicant

Visitor Centre or Educational Facility – Are CGen contemplating incorporating a visitor centre or taking up CABE's suggestion of an educational facility on site?

THE DEVELOPMENT CONSENT ORDER

DCO2/01

The Applicant

Definition of Commence – The Examining Authority is still concerned about the width of exclusion within this definition. The Requirements which must be discharged before commencement comprise:

- 2) Masterplan
- 6) Landscape Scheme
- 8) Highway Works
- 11) Operational surface and foul water drainage
- 14) CEMP
- 17) Noise monitoring during construction
- 28) Permanent Lighting Scheme
- 30) Water Vole Mitigation
- 32) Ecological Mitigation

Which of the excluded items is it necessary to carry out prior to discharging each of the above Requirements?

It is noted that the wording of certain Requirements have been amended to avoid unintended consequences. Should this also apply to Requirements 30 (Water Voles) and 32 (Ecological Mitigation)?

DCO2/02

The Applicant

Definition of Maintain – The Examining Authority is still concerned about the width of the definition, especially the inclusion of *remove*, *clear* and *reconstruct* which might be construed without limitation.

DCO2/03

The Applicant

Article 3(5)(b) Vertical Deviation – It would be helpful to gauge the visual effect of the permissible vertical deviation by superimposing it onto an existing photomontage, for instance from Viewpoint 7 (Skitter Road).

Provide such a montage.

CGen's hearing summary states at 5.1.1 that the maximum deviations in height have been subject to worst case analysis in the EIA (but) this is not expressed on the face of the ES. How is it expressed?

DCO2/04

The Applicant

Article 4 Non-material Changes – The Examining Authority considers that it should be left to the Secretary of State to decide whether to adopt this measure.

If s96A were adopted, could this be done without altering any of the wording?

DCO2/05

The Applicant

Article 5 Maintenance of Authorised Development – CGen justify this article as necessary to allow the maintenance of underground works.

Would it apply only to underground works? Its drafting implies a wider relevance.

DCO2/06

The Applicant

Article 7 Benefit of the Order – The Examining Authority notes that CGen are considering this article further in the light of the definition of *undertaker* which appears to have the effect of allowing the benefit to run with the land in all circumstances, rather than being personal in a selected range of circumstances.

Is CGen in a position to respond?

DCO2/07

The Applicant

Article 11 Temporary Stopping up of Streets – Justify acquiring powers under s120(3) to stop up a footpath not currently in existence.

DCO2/08

The Applicant

Article 33 Application of the Pipelines Act 1962 – Should this refer to subsection 9(2) rather than 10(2). It is still not clear why this facility could not be acquired as a right or easement through compulsory acquisition. Justify this.

DCO2/09

The Applicant

Article 35 Certification of Plans – In the examining Authority's experience, it is the Secretary of State's practice to certify the ES and the DAS. This occurred on Blyth and Galloper amongst other projects.

DCO2/10

The Applicant

Schedule 1 Part 1 Associated Development – Should item (h), the provision of footpaths, be included as associated development, since none are being provided, or does this refer to footways alongside roads?

DCO2/11

The Applicant

Schedule 1 Part 3 Requirement 4 – Concerns remain over the lack of specificity in both indicative drawings and the DAS, and the scope for significant change to occur on the authority of the LPA.

The Examining Authority suggests that the wording within parenthesis in sub-para 4(1) should be omitted. Comment on this.

The Examining Authority would welcome a refining of the drawings and the DAS, and consequent amendment of the DCO. The need for this also springs from considerations within the second round questions under Design, Layout and Visibility.

DCO2/12

The Applicant

Midcounties Co-operative Ltd - The Applicant is reminded that all provisions such as 'unless otherwise approved by the relevant planning authority' throughout the DCO should be subject to the Midcounties Co-operative Ltd test.

Provide justification in each case.

DCO2/13

The Applicant

Requirement 13 Archaeology – The opening wording 'No authorised development...' is inconsistent with the wording 'No part of the authorised development...' used elsewhere.

DCO2/14

The Applicant

Requirement 22 Construction Hours – Is it logical to limit construction hours but not to limit construction deliveries? Similar disturbance would arise.

DCO2/15

**The Applicant and
Natural England**

Requirement 24 The Effect of the Works on Haven Pits – Have Natural England reviewed this Requirement yet?

DCO2/16

The Applicant

Requirement 35(1)(b) CCS – Should this be 'installed and operated' rather than simply 'installed'?

DCO2/17

**The Applicant and
the Environment Agency**

Schedule 6 Part 4 DML Condition 20 Cooling water Intake – The Examining Authority is content for the screen specification to be covered through the environmental permitting process.

DCO2/18

The Marine Management Organisation

Discharge of DML Conditions – Has the MMO considered whether Article 36 is acceptable as a means of resolving difficulties over the discharge of DML conditions yet?

DCO2/19

The Applicant

New Carbon Capture Readiness Regulations – How does the introduction of the Carbon Capture Readiness (Electricity Generating Stations) Regulations, SI 2013/2696, which came into force on 25 November 2013, affect the content of the DCO?

ECONOMIC AND SOCIAL IMPACTS

ES2/01

The Applicant

Your response to question ES07(a) (4) states that:

Wherever possible, in accordance with National Grid guidance for the routing of underground cables and pipe lines, the routes for the Connections will follow field or natural boundaries such that potential disruption to farming operations will be minimised.

At what stage in the process of setting the route for pipes and cables will this micro routing be determined and how will the above objective be balance with other factors in determining the route.

ES2/02

The Applicant

Your response to question ES07(b) (4) refers to an Above Ground Installation (AGI) but does not discuss the impact of this on farming. However, table 16.3 of the Environmental Statement (Doc. 6.1) shows the 'Permanent occupation of agricultural land by any associated AGI'.

Set out the expected impact on farming of the AGI(s) with reference to their location(s), the type of farming carried on at that location and the need for access infrastructure to the AGI(s).

ES2/03

The Applicant

Provide an update on the progress on local labour agreements.

ES2/04

C.RO Ports Killingholme Limited

Your response to the first round of written questions states that:

C. RO and C. Gen are currently negotiating an agreement addressing all possible interfaces between both parties. This will aim to minimise any effects the C. GEN project could have on C. RO's activities at the Property.

Provide an update on those negotiations.

ENVIRONMENTAL IMPACT ANALYSIS

Noise & Vibration

Adequacy of baseline monitoring

EIA2/01

The Applicant

Sections 11.7.4 – 11.7.8 of the LIR details North Lincolnshire's concerns regarding baseline noise monitoring carried out at NSR1-NSR7.

How does the applicant propose to address these concerns for NSR1-NSR7?

EIA2/02

The Applicant

North Lincolnshire Council in its response to DCO42 and in LIR Section 11, is not satisfied with the noise limits given in Requirement 16 for construction, and Requirement 19 for operation. North Lincolnshire believes the proposed limits are not appropriate for the protection of residential amenity. The reasons why the proposed noise limits are too high are detailed in Section 11.7 of the Local Impact Report.

North Lincolnshire Council has suggested appropriate noise limits for Requirement 16 (LIR Section 11.8.11) and Requirement 19 (LIR Section 11.8.18) following a conference call on 9 October 2013.

Has agreement now being reached on these new noise limits, specifically the wording of Requirement 16 and 19 of the DCO?

Cumulative Impact Assessment (CIA) with AMEP and the Gas connection

EIA2/03

The Applicant

In your response to the ExAs Question EIA31 you state that:

The impacts on NKHP as a result of the AMEP development will require mitigation such that the residual impacts will be not significant. Given the inclusion of the NKHP within the Humber Estuary SPA, this will be a pre-requisite of the AMEP development given the protection afforded to the NKHP under its designation as a SPA.

Therefore, the cumulative impact on the NKHP will be the sum of "not significant" (mitigated) impacts from AMEP and the "not significant" impacts anticipated from the Project.

Therefore the cumulative impact is considered to be "not significant".

Do the “not significant” (mitigated) effects from AMEP and the “not significant” effects anticipated from the Project always synergistically equal an in-combination effect which is considered to be *“not significant”*?

Can the applicant provide its in-combination assessment of the effects anticipated from the Project and the effects from the AMEP development?

EIA2/04

The Applicant

Can the applicant provide its in-combination assessment of the effects anticipated from the Project and the effects from the Gas Connection?

Air Quality

Stack height calculations i.e. main and flare

EIA2/05

The Applicant

Please detail the basis on which the height calculations were made for the:

- a) Main stack?
- b) Flare stack?

Dust

EIA2/06

The Applicant

Can the applicant provide a Coal Dust Management Plan for all operations at the:

- a) Jetty
- b) Operations area and
- c) North Killinghome Branch Line?

EIA2/07

The Applicant

- a) Does the applicant propose to cover the coal train wagons with protective coverings?
- b) If so, how will their use be ensured on every journey?

EIA2/08

The Applicant

Can the applicant provide a discrete dust impact assessment for all handling operations associated with biomass fuel in Scenario E?

Radioactivity in the ground

EIA2/09

The Applicant

The LIR Section 11.3, has identified radioactive ground contamination (Uranium Catalysts) as a potential public health concern.

Can the Applicant provide a desk based radiological risk assessment for the Uranium Catalysts?

Can the Applicant amend the CEMP and Requirement 14 to address this issue?

Gas and Electrical Connection Surveys

EIA2/10

The Applicant

In the Applicant's response to EIA20 you detailed the results of Phase I "site walkovers" for the gas and the electrical connections.

Gas Connection Land

- a) When do you plan to carry out a HRA screening for likely significant effects on the Humber Estuary European Protected site?
- b) Can the applicant provide a schedule for all Phase II ecological surveys to be carried out in 2014?
- c) When will the detailed design of the route be finalised?

Electrical Connection Land

- d) When do you plan to carry out a HRA screening for likely significant effects on the Humber Estuary European Protected site?
- e) Can the applicant provide a schedule for all Phase II ecological surveys to be carried out in 2014?
- f) When will the detailed design of the route be finalised?

CEMP

EIA2/11

The Applicant

- a) Does the Applicant propose to produce a monitoring report setting out progress on the measures set out in the Construction Environmental Management Plan [Doc. Ref. EAWR/2] that would be submitted (at a frequency to be agreed) to the enforcement authority?
- b) As the CEMP develops through the examination, can the Applicant provide updated versions to the ExA?

EIA2/12

The Applicant

- a) Will the CEMP become part of the tender documents for the EPC contractor?
- b) Will the CEMP then be developed further by the successful EPC contractor i.e. through detailed method statements for each mitigation proposal?

EIA2/13

The Applicant

The CEMP details in Section 2.9[Doc. Ref. EAWR/2] the roles and responsibilities for different postholders. Will these postholders have powers to order cessation/reduction (as is provided for in section 3.4.5 a) in any works giving rise to significant effects?

EIA2/14

The Applicant

Sections 3.3.9, 3.3.10, 3.3.11, 3.3.12, 3.3.13, 3.3.14 [Doc. Ref. EAWR/2] refer to mitigation that "should be" implemented.

Should these be replaced with "will be"?

EIA2/15

The Applicant

EIA21/APP1 provides a summary of mitigation measures and where they will be secured i.e. DCO, DML, EP and CEMP.

Can the Applicant provide an updated version of EIA21/APP1 with each draft of the DCO and DML?

Thermal plume modelling

EIA2/16

The Applicant

The Applicant states in NEWR/1 paragraph 5.3.5.3 that:

".....the potential "zone of influence" from the Project discharge infrastructure, to be located on or near existing jetties of CPK, will be limited to an equivalent area for these existing outfalls."

Can the applicant provide quantitative dispersion modelling to support this statement?

Masterplanning

EIA2/17

The Applicant

Given the phased nature of the Project and the large areas of land involved, does the Applicant propose to develop an overall masterplan for the Project?

Will a draft of the Masterplan be made available to the ExA before the end of the examination.

HABITATS, ECOLOGY and NATURE CONSERVATION

Screening and Integrity Matrices

Ha2/01

The Applicant

In relation to disturbance during construction, the SPA Integrity matrix states [Doc. Ref. H30/APP1) that on Page 12 d:

A detailed Method Statement will be developed to ensure that no contaminants are released into the SPA / Ramsar Site.

We assume this is an error as it is not clear how an unspecified control of contaminants would mitigate disturbance impacts. Can the Applicant clarify this statement?.

Also Page 12e, In relation to disturbance during operation, the SPA matrix refers to no significant adverse effects as a result of the cooling water intake and discharge, or as a result of nutrient deposition. We assume these references are an error as these other impacts do not obviously relate to the assessment of impacts from disturbance.

Can the Applicant clarify this statement?

Ha2/02

The Applicant

Can the Applicant confirm the current status of SOCG's with:

- a) Natural England
- b) The MMO
- c) The Environment Agency

Potential disturbance of bird species in the SPA/Ramsar

Ha2/03

The Applicant:

Natural England has advised in its 09/12/13 submission that:

the competent authority must ensure there is no reasonable scientific doubt concerning its Habitats Regulations conclusions

Can the Applicant clearly detail how it believes that its potentially disturbing activities from construction and operation of the project do not compromise the integrity of the European Site (SPA) and its conservation objectives?

Ha2/04

The Applicant

EIA21/APP1 provides details of mitigation proposals. The CEMP provides the appropriate mechanism through which necessary mitigation is delivered but sufficient information needs to be provided at this stage to clearly demonstrate how each potential impact will be avoided or mitigated and whether there will be any residual impact.

- a) Can the Applicant provide more details of necessary mitigation and avoidance measures to allow the competent authority to test that these are both adequate and deliverable to allow for a conclusion of no adverse effect on integrity?
- b) How would the mitigation be implemented and by whom?
- c) What is the degree of confidence in the mitigations likely success?
- d) Provide timescales of when mitigation would be implemented, maintained and managed?

Use of railway – “habituation”

Ha2/05

The Applicant

In Paragraph 10.6.9 of the ES [Doc. Ref. 6.1] it states:

The assessment of the impact the trains will have in terms of noise has been undertaken on the basis that there will be no more than 10 train movements to the Operations Area in any 24 hour period.

In the Applicant's response to the LIR Paragraph 11.9.6.4, it states:

The assessment of the impact the trains, in respect of noise, has been undertaken on the basis that there will be an average of 10 train movements to the Operations Area in any 24 hour period

This is also repeated in section 15, para. 1.2.6.1 [Doc. Ref. WR2/1] in response to ABP's response to ExA question TT13.

- a) What has been actually assessed in the EIA?:
- b) Is it no more than 10 train movements in any 24 hour period,
- c) Is it an average of 10 train movements in any 24 hour period or
- d) Is it the worst case scenario? Can the applicant describe the worst case scenario?
- e) Has the worst case scenario been assessed?

Ha2/06

The Applicant

The applicant acknowledges that there will be disturbance of birds as a result of the train movements through NKHP. You argue in your answer to H18 and in NEWR/1, that the birds will become "habituated" to the movements. Please detail the basis for your "habituation" argument factoring in the Waterman et al (2003) paper provided in Appendix I of the Able submission dated 09/12/13?

Ha2/07

The Applicant

In the applicants response to the ExA first round question H18 you state that:

A study in the report¹ investigates the response of bird species to train activity (14 trains passing through). In the area potentially impacted by rail activity, it was found that in 55% of the time, there is no response (8 occasions), 30% of the time birds are on alert (4 occasions), and 15% of the time, a walk/swim is observed (2 occasions). No flighting as a result of the trains was observed...

The percentage figures quoted in the Applicant's response are correct, however these must be seen in the context that they relate to only 14 observations of train activity against a total of 1,299 observations for the study.

Would the applicant agree that these figures alone are therefore unlikely to provide a reliable basis for conclusions on potential impacts of train activity on birds?

Ha2/08

The Applicant

In the applicants response to the ExA first round question H18 you state that:

"J D Goss-Custard (2008)² produced a paper monitoring the effects of the Exmouth-Lympstone section on the shorebirds of the Exe Estuary Special Protection Area. They report that "The rapid habituation of redshank- and even faster habituation of the turnstone and brent geese – to people on the cycleway at Exmouth Rise has provided strong evidence that shorebirds on the Exe will quickly get used to some of the new disturbance associated with the National Cycle Network (as they clearly have to trains)."

¹ Liley, D., Cruickshanks, K., Waldon, J. & Fearnley, H. (2011). Exe Estuary Disturbance Study. Footprint Ecology

² J D Goss-Custard (2008) Monitoring The Effects Of The Exmouth-Lympstone Section On The Shorebirds Of The Exe Estuary Special Protection Area, Report To Devon County Council Prepared By J D Goss-Custard

The Applicant's quote from the document is correct, however it omits a potentially important part from the end of the sentence. After "... (as they clearly have to trains)" the document states "... – but only up to a point".

Would the applicant agree that this study is therefore unlikely to provide a reliable basis for conclusions on potential impacts of train activity on birds?

Ha2/09

The Applicant

Table 10.21 in the Environmental Statement [Doc. Ref 6.1] shows that at a predicted increase in noise above the existing background level of +11.2 dB is likely at the SSSI due to noise from train deliveries. This is assessed to be of severe significance. EIA21/APP1 provides a comprehensive listing of the applicants mitigation proposals.

Can you detail your proposed operational mitigation measures (i.e. noise, visual and dust) for the train movements through NKHP?

Ha2/10

The Applicant

- a) Does the applicant propose to agree a cap on daily train movements through NKHPs between November and July?
- b) Does the applicant propose to further reduce train movements through NKHPs between August and October when the Black Tailed Godwit (*Limosa limosa*) is moulting?

Ha2/11

The Applicant

Natural England (Page 2 of 5 Section 4 ii final paragraph of its submission dated 09/12/13) states that it remains to be persuaded that the applicant has provided the necessary evidence to remove its "reasonable scientific doubt". Literature reviews are unlikely to provide robust conclusions on "habituation" of bird species in NKHP to train disturbance.

How does the applicant propose to address Natural England's "reasonable scientific doubt" regarding disturbance to bird species from train movements through NKHP?

Ha2/12

The Applicant

References to the following documents are included in the response to H18, as part of the quote from the Exe Disturbance Study. No copies of the documents are provided, however they are also referenced within Liley et al (2011) which is within Appendix 1. Can the applicant provide copies of the following:

- Baudains, T.P. & Lloyd, P. (2007) Habituation and Habitat Changes Can Moderate the Impacts of Human Disturbance on Shorebird Breeding Performance. *Animal Conservation*, 10, 400-407.
- Nisbet, I.C.T. (2000) Disturbance, Habituation, and Management of Waterbird Colonies - Commentary. *waterbirds*, 23, 312-332.
- Walker, B.G., Dee Boersma, P. & Wingfield, J.C. (2006) Habituation of Adult Magellanic Penguins to Human Visitation as Expressed Through Behavior and Corticosterone Secretion. *Conservation Biology*, 20, 146-154.
- Goss-Custard, J.D. & Verboven, N. (1993) Disturbance and Feeding Shorebirds on the Exe Estuary. *Wader Study Group Bulletin*, 68, 59-66
- Study of habituation in the Exe Estuary prepared by Parsons Brinckerhoff for Devon County Council

Disturbance of birds from Conveyor belt construction and operation

Ha2/13

The Applicant

The applicants report reference 5.5 paragraph 7.3.14 indicates that piling will be required along the length of the fuel conveyor route. What are the details regarding the timing, duration and anticipated noise levels during construction?

Ha2/14

The Applicant

Table 10.20 in the Environmental Statement [Doc. Ref 6.1] shows that a predicted increase in noise above the existing background level of +10.2 dB is likely at the northern boundary of the Haven Pits, and Humber Wharf SSSI sites when the pipe conveyor is in operation. This is assessed to be of severe significance.

Table 10.21 in the Environmental Statement [Doc. Ref 6.1] shows that a predicted increase in noise above the existing background level of +11.2 dB is likely at the SSSI due to noise from train deliveries.

Appendix 10.6 [Doc. Ref. 6.2] shows the noise contours resulting from IGCC and train movements operating together.

- a) Is the pipe conveyor operation included in the Appendix 10.6 contours?
- b) Can the applicant model the predicted increase in noise above the existing background level from IGCC (including conveyor belt), train movements and AMEP operating together?
- c) Can the applicant provide an assessment of the significance of the actual material effect of this predicted noise increase at the SSSI sites?

Ha2/15

Natural England

Does Natural England believe that an appropriate noise limit eg. $65\text{dBLA}_{\text{max}}$ which was the agreed requirement for AMEP, could be set for all the project's construction and operation activities that would protect the conservation objectives and the site integrity of the NKHP portion of the SPA?

Flare Stack

Ha2/16

The Applicant

Figures 3.2 and 3.3 [Doc. Ref. 6.3 ES Vol III] are schematics showing the operational plant layout.

How far is the flare stack (no. 23) from the boundary of NKHP SSSI?

Ha2/17

The Applicant

- a) What are the acoustic characteristics of the flare start up, operation and shutdown?
- b) Is it tonal, impulsive or intermittent?

Ha2/18

The Applicant

In the Applicants response to NEs WRs para 8.6.8 you state that:

"the operation of the Flare Stack will be in accordance with BAT, such that it will only operate as a start-up, shutdown and emergency measure and will not operate continuously. With an anticipated 12-15 start-ups (and shutdowns) per annum, the total operation of the Flare Stack is likely to be approximately 7 hours per annum."

Can the Applicant provide an assessment of the potential disturbance caused by the flare stack operation to the qualifying features of European Sites of the Humber Estuary, and specifically NKHP SSSI?

Ha2/19

The Applicant

- a) What will be the visual characteristics of flare start up?
- b) Will it be startling?

Ha2/20

The Applicant

Can the applicant provide additional details i.e. heights, operational noise characteristics, plume temperatures of existing flarestacks in the area?

Disturbance of birds on the inter-tidal habitat

Ha2/21

The Applicant

Paragraph 7.5.59 of the ES [Doc. Ref. 6.1] recognises that "construction works will result in an increase in vehicular and people movement, noise, light and vibration". It goes on to state that "It is therefore considered likely that further works around the wharf area will affect an area of the SPA, and associated populations of wintering birds that is already subject to disturbance and utilised less than the nearby (less disturbed) areas of the Estuary".

Can the Applicant provide an assessment of the specific impacts of the development under consideration and on the specific interest features of the site to determine if this is significant and to provide a basis for appropriate avoidance and mitigation measures?

Ha2/22

Natural England

The applicant has supplied CMACS survey data from 2010/11 in H04/APP1 and H04/APP2 and also detailed in NEWR/1 paragraphs 5.2.5.1-5.2.5.2. Does this address the specific points raised in your Written Representation paragraph 5.2.4 dated 14 October 2013?

Noise disturbance

Ha2/23

The Applicant

Can the applicant describe how the baseline noise monitoring surveys (day, night-time and weekend) were carried out at NSR 8, 9 and 10?

Were these shorter periods than normal and would they have overestimated ambient baseline noise levels?

Ha2/24

The Applicant

The Appendix LIR/1 "The Outline Operational Noise Compliance Methodology" dated 11 November 2013 does not address:

- a) train movements
- b) conveyor belt
- c) flare stack and
- d) fuel handling jetty operations.

Can the applicant update Appendix LIR/1 to address the above 4 items?

Ha2/25

The Applicant

What operational noise limits would the applicant propose at NSR 8, 9 and 10?

Disturbance of birds on adjacent land

Ha2/26

Natural England

Can NE provide additional information on, bird populations in 'Field A'?

Ha2/27

The Applicant

Natural England have advised (NE submission 09/12/13, section 4 v) that the Applicant's response to the ExA's question H07 and H07/APP1 does not satisfy their concerns relating to disturbance of bird populations to the north (in adjacent fields < 800m away) from the development.

Can the applicant quantify the impacts on these bird populations (including the SPA/Ramsar waterbird mitigation area for ALP adjacent to the applicants proposed laydown area) and propose appropriate mitigation to address these impacts?

Alternatives

Ha2/28

The Applicant

In your response to EIA15 Paragraph 7 you quote from NPS EN-1 section 4.4.1: *"From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option".*

The NPS does continue in the following paragraphs to say:

However:

applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility;

in some circumstances there are specific legislative requirements, notably under the Habitats Directive, for the IPC to consider alternatives. These should also be identified in the ES by the applicant;

What alternative routes to cause less disturbance to birds using NKHP were considered for the conveyor belt?

Cumulative and in-combination effects

Ha2/29

The Applicant

The Applicant's Report to Inform Habitats Regulations Assessment for the Generating Station [Doc Ref 5.5] states in paragraph 8.1.3 (reiterated at paragraph 16.8.6 of the ES for the Generating Station [Doc Ref 6.1] in relation to indirect / secondary and cumulative effects.):

"The HRA of the Able Marine Energy Park has significant adverse effects and compensatory and mitigation measures are proposed. On the basis that a significant adverse effect is already identified as a result of AMEP it is not feasible for the [Generating Station] to result in a significant adverse in-combination effect."

In your response to Question H29 you state "no cumulative or in-combination effects with AMEP are predicted".

Can the Applicant provide an assessment of the actual material effects on the Natura 2000 site, cumulatively and in-combination with the AMEP development?

Ha2/30

The Applicant

The in-combination assessment section of the shadow HRA [Doc.Ref. 5.5] does not appear to take account of some in-combination impacts, such as potential noise and visual disturbance to North Killingholme Haven Pits which have been dismissed as not requiring assessment due to impacts from other developments.

Can the applicant provide an assessment of the potential disturbance i.e. the actual material effect to North Killingholme Haven Pits from the North Killingholme Power Project in combination with potential disturbance from AMEP?

Monitoring as Mitigation

Ha2/31

The Applicant

Can the Applicant provide details of what part monitoring and follow up (triggers prior to any adverse effect) will play as part of its mitigation measures i.e. ensuring that all measures necessary to avoid an adverse effect on site integrity of the SPA are taken?

Ha2/32

Natural England

What monitoring and follow up (triggers prior to any adverse effect) proposals should the applicant consider as part of its mitigation measures i.e. ensuring that all measures necessary to avoid an adverse effect on site integrity of the SPA are taken?

Loss of SAC habitat

Ha2/33

The Applicant

Can the Applicant clearly detail how it believes that its potentially disturbing activities from construction and operation of the project do not compromise the integrity of the European Site (SAC) and its conservation objectives?

Ha2/34

The Applicant

No information is provided within the HRA Report/matrices to confirm the 'small' amount of habitat within the SAC to be lost as result of cooling water intake structures (as referred to in footnote (a) of the Integrity Matrices). This issue is raised by Natural England in their letter of 11 November 2013, however they conclude that the Applicant's response to ExA question H29 indicates that this loss will amount to 3.2m² and as such the assessment of no adverse effect on site integrity is considered satisfactory.

The ExA has found no evidence however to confirm that the loss of habitat will be limited to 3.2m². Paragraph 3.6.3 of the ES states that:

"The abstraction and discharge connection into the river will comprise two pipes of up to approximately 0.5 m in diameter (subject to the final design of the Cooling Water Connection and the on-site surface water drainage systems¹⁸). They will be laid through that part of the Principal Project Area comprising CPK

and the River Humber. The Cooling Water Connection pipe work will be suspended from or adjacent to the existing jetty structures of CPK as shown in Figure 2.4".

Figure 2.4 of the ES is a high level drawing and does not show building dimensions. Furthermore, a comparison between Figure 7.1 (showing the SAC boundary) and Figure 2.4 (showing the land for the cooling water connection) also appears to indicate a level of development within the SAC that is greater than 3.2m².

Can the applicant confirm the extent of the works (and associated habitat loss) within the SAC with the Applicant, where this is identified within the application documents and how the extent of the loss is controlled through the DCO and/or the deemed Marine Licence?

Cooling water intake/outfall and SAC species populations

Ha2/35

The Applicant

Paragraph 13.5.58 of the ES states that the:

"...slight temperature rise coupled with the small volume of discharge will mean that the impact of the discharge upon the River Humber (and C.GEN's neighbours) will not be perceivable beyond the mixing zone and thus not significant".

However, there appears to be no assessment of the potential impacts on marine ecology within the ES. It is not clear why this has been scoped out (May 2011 Scoping Opinion Request; July 2011 PINS Scoping Opinion)?

Can the Applicant provide a note addressing the potential impacts on marine receptors that could arise from the increase in temperature? Evidence should be provided that is sufficient to show that the increase in temperature will not affect spawning or migratory species.

Ha2/36

The Applicant

The Applicant has stated that biocides will be used to maintain the pipelines throughout the generating station but the ES does not include an assessment of their potential effect on sensitive marine receptors. It is not clear why this has been scoped out?

Can the Applicant provide a note addressing the potential impacts on marine receptors that could arise from the use of biocides?

Ha2/37

The Applicant

In your response to the MMO WR you state in paragraph 3.3:

".....tidal flows of the River Humber, which are beyond C.GENs control may produce net velocities > 0.1m/s at the intakes".

Can the Applicant provide an assessment of the maximum intake velocities which could occur throughout the complete tidal cycle, and the effect on species mortality?

Will the applicant be proposing "soft start" procedures in the DML?

Protected species mitigation

Bats and EPS licence

Ha2/38

The Applicant

Natural England have advised in a written response to the applicant on the 10th October 2013 providing the following advice:

"...the ultimate decision as to whether a licence is required lies with the applicantand Natural England should be consulted at the earliest opportunity to discuss submission of the draft licence."

Can the Applicant detail their current position regarding the need for a licence as outlined in NEWR/1 paragraphs 5.5.9.1 – 5.5.9.10?

Ha2/39

Natural England

Do you believe there is currently any impediment to the applicant receiving a licence if it choose to apply?

Ecological Mitigation Land

Ha2/40

The Applicant

How was the site for the EML shown in Figure 2.2 [Doc. Ref. 6.3] sized and chosen?

Were any other alternative sites considered?

THE HISTORIC AND ARCHAEOLOGICAL ENVIRONMENT

HO2/01

The Applicant

Context – At the hearing it was confirmed that photomontages of the proposed ALP development were now available. These were attached as an appendix to CGen’s hearing summary. Provide details of which project photomontages would be affected by this information, and how they would be affected.

In the same manner provide details, where possible, of any other contextual effect, existing or proposed.

HO2/02

The Applicant

Brick and Tile Kiln – At the hearing it was confirmed that a photomontage of the effect of the project on the Brick and Tile Kiln had already been prepared and that it would be attached to the forthcoming statement of common ground between CGen and the Council.

- a) Provide a plan showing the location of the viewpoint and explain why it was chosen.
- b) Clarify whether other public views of the asset are possible, particularly from the south and indicate the masking effects of surrounding existing and proposed development.

HO2/03

The Applicant

Thornton Abbey Station – Analyse the relationship between the proposed development and Thornton Abbey along the length of the platform and present the analysis in terms of viewing lines on plan. Prepare a photomontage based on the most critical viewpoint.

HO2/04

The Applicant

Manor Farm Moated Site – At the hearing, the masking effect of the proposed ALP development was mentioned. Provide details to assist in assessing whether gapping up the boundary hedge in VP1 would comprise appropriate mitigation.

HO2/05

The Applicant

Baysgarth Moated Site – The Examining Authority appreciates the difficulties of access and understands that efforts are continuing. A positive outcome would be helpful, given historic interest in the overall local development pattern of the moated sites.

Please report progress.

HO2/06

The Applicant

Goxhill Hall Moated Site – Provide a plan showing views possible from the asset towards the site and their relationship to existing obstructions.

HO2/07

The Applicant

Services Connectors – Indicate on plan the location of the 11 undesignated heritage assets present in the areas being considered for service connector routes. Suggest mitigation methods for reducing the impact if the assets cannot be avoided, such as heading rather than trenching sections of the route.

Report on progress towards identifying AGI locations. (see also questions CA2/17 and ES2/02)

HO2/08

The Applicant and

North Lincolnshire Council

Trial Trench Investigation – At the hearing it was indicated that the final report would be available shortly. This should be provided, together with the Council's comments, in time for the responses deadline if at all possible.

HO2/09

North Lincolnshire Council

Chase Hill Romano-British Settlement – LIR 7.5.3 identified these archaeological remains as extending eastwards towards the northern part of the operations area.

What are the Council's comments following CGen's response at the Hearing and in its written summary (4.4.1).

OPERATIONAL ISSUES

Op2/01

The Applicant

In the Environment Agency's opinion (Response to Op13 Appendix A dated 11/11/13) 16.9ha is required for the CCR plant. A smaller area may be adequate but additional information needs to be provided by the applicant to determine this.

The following additional information is required to determine the adequacy of the area for CCR plant. The additional information required is as follows:

- a) A statement describing how the space allocations for all items listed in section B3 of Annex B of the DECC CCR guidance note, along with the other items listed in figure 3, were determined and how they will be met;
- b) Details of the CO₂ pipeline route and the space allocation within the "operations area";
- c) A clear identification of the location of the hydrogen fuel gas production facilities, shift reactor, CO₂ separation and compression equipment on the site plan;
- d) Details of whether there will be storage of hydrogen and CO₂, and ,if so, they should be identified on the site plan along with a statement describing how the space allocations for these items were determined and how they will be met;
- e) Details of whether the addition of selective catalytic reduction equipment may be needed to achieve NO_x emission levels when the gas turbine is converted to a hydrogen rich fuel;
- f) A statement is required of estimated additional compressed air requirements for the CCP together with a description of how these will be accommodated;
- g) A statement is required of estimated treated raw water requirements for the CCP with a description of how these will be accommodated;
- h) A statement is required of estimated increased demineralised water use for the CCP;
- i) A statement is required giving estimated additional waste water treatment needs for the CCP describing how the necessary space and any other provisions will be provided to meet expected demands.

Op2/02

The Applicant

The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 , No. 2696, came into force on the 25 November 2013.

The Regulations state in Section 2:

“For the purposes of these Regulations, the CCR conditions are met in relation to a combustion plant, if, in respect of all of its expected emissions of CO₂—

- a) suitable storage sites are available;*
 - b) it is technically and economically feasible to retrofit the plant with the equipment necessary to capture that CO₂; and*
 - c) it is technically and economically feasible to transport such captured CO₂ to the storage sites referred to in sub-paragraph (a).”*
- a) Provide the details of how CGen plan to meet the CCR conditions a-c in the 2013 CCR Regulations. Your detailed answer should not just refer the ExA back to your answers to first round questions Op15, Op17, Op19 and Op20.
 - b) Can CGen identify the suitable storage sites which are available for its CO₂ emissions?
 - c) What funding provisions have CGen made to capture, transport and store its CO₂ emissions?

Op2/03

the Environment Agency

Do you believe the applicant has demonstrated that they propose to retain sufficient space to accommodate the CCP and equipment and that it is technically feasible to retrofit the CC technology selected? Given CC technologies have not been demonstrated on a commercial scale the CCR requirements are that ‘there are no foreseeable barriers’ to retrofit.

Do you consider that there any foreseeable barriers to retrofitting of the CGen development?

Op2/04

The Applicant

Can CGen provide the minutes of all meetings with National Grid Carbon and a copy of the “2011 Letter of Intent “ with National Grid Carbon described in your response to Op14?

Op2/05

The Applicant

In your response to Op20 a and b, CGen said it had referred the questions to DECC. Has DECC provided CGen with a response?

Op2/06

The applicant

In CGens response to Op26 you state that *thermal radiation effects could be experienced up to an overall height of c. 330-350m*

Will thermal radiation effects from flare operation be the same in all directions i.e. c 330-350m?

Op2/07

The Environment Agency

Has the Environmental Permit application been "duly made"?

Will the EA be in a position to provide a letter of comfort/no impediment to the ExA on the EP application prior to the end of the examination on 11 March 2014?

TRANSPORT AND TRAFFIC

TT2/01

The Applicant

Sensitivity Analyses – At the Hearing, CGen confirmed that they would be producing sensitivity analyses to supplement the Core Scenario Transport Assessment. These analyses would test the acceptability of traffic arrangements should road improvements not take place according to the assumed programme, or should surrounding developments be carried out with coincident traffic peaks, or both.

CGen's hearing summary suggests that sensitivity testing be confined to assessing the project without the A160 improvements, specifically the effects on Junctions 2 and 4.

The Examining Authority considers sensitivity testing should go further by including, in a staged manner, the situations which would arise if improvements also did not take place at the remaining junctions. This would be on the assumption that the sponsoring projects did not start as planned, with consequent reduction in construction traffic.

Testing should also take place for the situation without the A160 improvements and with construction peaks coinciding for the surrounding projects.

TT2/02

The Applicant

Accelerated Programme for A160 Upgrade - CGen's hearing summary tells us at 3.2.1 that this project has been identified as a demonstration project designed to halve the time it takes to deliver major road projects.

Consider fully the scope for disruption caused by the more intensive working this approach implies. Consider also the effects of coincidence of the upgrade working with CGen peak construction traffic which would occur should the upgrade not deliver its programme expectations or the NSIP process not allow the expected start time. At time of writing, an application has not yet been submitted.

TT2/03

The Applicant

Masterplan – Confirm that the implications of the alternative transport and traffic scenarios used in the sensitivity analyses will be form part of an overall coordinated masterplan.

TT2/04

The Applicant

Mitigation/Requirements/Agreements – Provide clarification of the mitigation measures, and their incorporation in requirements or agreements, should highways improvements not be carried out when expected or should surrounding developments be carried out with co-incident traffic peaks.

TT2/05

North Lincolnshire Council

Highways Improvements – Confirm that no junction specific or other highways improvements will be required of CGen by the Council.

TT2/06

The Applicant

Vehicle Routing – At the Hearing, CGen stated that details of vehicle routing, including HGV routing avoiding the Immingham Air Quality Management Area, would be included in a s106 agreement involving the two councils.

Provide a draft of the s106 agreement.

TT02/07

The Applicant and all others involved in the Travel Plan

Travel Plan – Confirm the state of progress and the parties involved in the Travel Plan, responsibilities and monitoring arrangements

Set out the opportunities and effects of using shuttle buses with regard to pick up sites, movement volumes, timings, and in particular realistic demand and usage levels.

TT02/08

The Applicant

Rail – Confirm maximum branch line use calculations and point to where the worst effects have been considered in the ES.

Relate this to barrier down time at the level crossings both on and off AMEP land.

Respond to the criticisms made in Able's hearing summary.

TT02/09

The Applicant

Rail – Clarify rail handling, off-loading and storage arrangements on the CGen site. Show how these arrangements feed into branch line use calculations and implications for level crossing restrictions.

Clarify arrangements for storage and loading of waste products, including sulphur.

TT02/10

The Applicant

Rail – Respond to the criticisms in Able's hearing summary regarding dust generation.

TT02/11

The Applicant

Network Rail

Associated British Ports

Able Humber Ports

Rail – Report the latest progress in discussions re: capacity, agreed usage, restrictions, and level crossings.

TT02/12

The Applicant

Rail – Report the latest progress in discussions with Network Rail on infrastructure crossings.