S T A T U T O R Y I N S T R U M E N T S

201 No.

INFRASTRUCTURE PLANNING

The Tees Combined Cycle Power Plant Order 201

Made - - - [ ]

Coming into force - [ ]

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An application under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") has been made to the Secretary of State for an order granting development consent.

The application has been examined by the examining authority as a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**b**). The examining authority has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

The Secretary of State has considered the report and recommendation of the examining authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**c**) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 140 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Tees Combined Cycle Power Plant Order 201 and comes into force on 201 .

Interpretation

2.—(1) In this Order—

"the 1980 Act" means the Highways Act 1980(**d**);

(**a**) 2008 c.29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c.20). Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see the Growth and Infrastructure Act 2013 (Commencement No.1 and Transitional and Saving Provisions) Order 2013 (S.I. 2013/1124) for transitional provisions.

(**b**) S.I. 2010/103, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendment) Regulations 2012 (S.I. 2012/635).

(**c**) S.I. 2009/2263. Regulation 3 was amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendment) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (S.I. 2012/787). S.I 2009/2263 was revoked by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572), but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.

(**d**) 1980 (c.66). Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local

"the 1990 Act" means the Town and Country Planning Act 1990(**a**);

"the 2008 Act" means the Planning Act 2008;

"authorised development" means the development and associated development described in Part 1 of Schedule 1 (authorised development), which is development within the meaning of section 32 of the 2008 Act;

"building" includes any structure or erection or any part of a building, structure or erection;

"commence" means the carrying out of any material operation (as defined in section 155 of the 2008 Act) forming the relevant part of the authorised development and "commences" "commenced" and "commencement" are construed accordingly;

"environmental statement" means the documents submitted with the application and certified as the environmental statement by the Secretary of State for the purposes of this Order together with any supplementary or further environmental information submitted by the undertaker in support of the application (APP-042 to APP-081);

"existing access plan" means the plan submitted with the application and certified as the existing access plan by the Secretary of State for the purposes of this Order (APP-015);

"highway authority" has the same meaning as in the 1980 Act;

"indicative demineralised water connection plan" means the plan submitted with the application and certified as the indicative demineralised water connection plan by the Secretary of State for the purposes of this Order (APP-021);

"indicative drainage plan" means the plan submitted with the application showing the indicative drainage connection point and certified as the indicative drainage plan by the Secretary of State for the purposes of this Order (APP-026);

"indicative electrical connection plan" means the plan submitted with the application and certified as the indicative electrical connection plan by the Secretary of State for the purposes of this Order (APP-020);

"indicative gas supply pipeline connection plan" means the plan submitted with the application and certified as the indicative gas supply pipeline connection plan by the Secretary of State for the purposes of this Order (APP-024);

"indicative generating station layout plan" means the plan submitted with the application and certified as the indicative generating station layout plan by the Secretary of State for the purposes of this Order (APP-018);

"indicative landscaping plan" means the plan submitted with the application and certified as the indicative landscaping plan by the Secretary of State for the purposes of the Order (APP-029);

"indicative potable water connection and raw water connection plan" means the plan submitted with the application and certified as the indicative potable and raw water connection plan by the Secretary of State for the purposes of this Order (APP-022 and APP-023);

"ISO Conditions" means ambient temperature of 15° Celsius, relative humidity 60% and ambient pressure of 1 bar;

Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. Sections 105A-105D were inserted by regulation 4(2) of the Highways (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1062). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**a**) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force in relation to England: 6th April 2012: S.I. 2012/601). There are other amendments to the 1990 Act which are not relevant to this Order.

"land" includes land covered by water and any interest or right in, to or over land;

"land ownership and interests schedule" means the land ownership and interests schedule certified by the Secretary of State as the land ownership and interests schedule for the purposes of this Order;

"land plan" means the plan submitted with the application and certified as the land plan by the Secretary of State for the purposes of the Order (APP-012);

"maintain" includes, to such an extent that it will not give rise to any materially new or materially different environmental effects to those already assessed in the environmental statement, inspect, maintain, repair, adjust, alter, remove, refurbish, reconstruct and or improve any part but not the whole of the authorised development and "maintenance" is construed accordingly;

"Ministry of Defence" means the Defence Geographic Centre at G7 MacLeod Building, Elmwood Avenue, Feltham, Middlesex TW13 7AH United Kingdom;

"the Order land" means the land which is required for the construction and operation of the authorised development shown on the land plan and described in the land ownership and interests schedule;

"the Order limits" means the lateral limits shown on the works plan and the vertical limits set out in Article 6 and Requirement 4(2) within which the authorised development may be carried out;

"preliminary works" means operations consisting of site clearance, environmental surveys, investigations for the purpose of assessing ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or installation of a site compound or any other temporary building or structure

"relevant planning authority" means the local planning authority for the area in which the authorised development is situated;

"requirements" means those matters set out in Part 2 (Requirements) of Schedule 1 and requirement means any one of those requirements;

"southern boundary sound wall" means the boundary wall situated along the southern boundary of the Order land the location of which is shown on the works plan (APP-014);

"undertaker" means Sembcorp Utilities (UK) Limited (company registration number 04636301) or any person who has the benefit of this Order in accordance with article 7;

"western boundary sound wall" means the boundary wall to be situated along part of the western boundary of the Order land the location of which is shown on the works plan (APP-014); and

"works plan" means the plans submitted with the application and certified as the works plan by the Secretary of State for the purposes of this Order (AS-001and APP-014).

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered and described in Part 1 of Schedule 1 (authorised development) and shown on the works plan.

(5) The expression "includes" is to be construed without limitation.

(6) All areas described in square metres in the land ownership and interests schedule are approximate.

(7) References to any statutory body include that body's successor bodies.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Part 2 of Schedule 1, the undertaker is granted development consent for the authorised development in Part 1 of Schedule 1 to be carried out within the Order limits.

(2) In constructing the authorised development the undertaker may construct each numbered work anywhere within the corresponding numbered area shown on the works plan up to the limits of deviation.

Power to maintain authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

PART 3

OPERATIONS

Operation of authorised development

5.—(1) The undertaker is hereby authorised to operate and use the generating station and associated plant comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Limits of deviation

6. In carrying out the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on that plan ; and

(b) deviate vertically to any extent downwards as may be found necessary or convenient.

Benefit of the Order

7.—(1) The undertaker may with the consent of the Secretary of State—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed in writing between the undertaker and the lessee;

except where paragraph (5) applies in which case the Secretary of State’s consent is not required.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) This paragraph applies where the transferee or lessee is a person who holds a licence under section 6 of the Electricity Act 1989(**a**) or section 7 of the Gas Act 1986(**b**).

(5) Where consent of the Secretary of State is not required pursuant to sub-paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in sub-paragraph (1).

(6) The notification referred to in sub-paragraph (5) must:

(a) be signed by the undertaker and the transferee or lessee;

(b) include the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(c) contain details of the powers to be transferred or granted;

(d) include details of the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;

(e) where only part of the benefit of the Order is being transferred or granted, include a plan showing the works or areas to which the transfer or grant relates; and

(f) specify the date on which the transfer will take effect (such date to be no earlier than one week from the date of issue of the notification).

Application of legislative provisions

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

(2) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits under the Town and Country Planning (General Permitted Development) (England) Order 2015 or a planning permission granted under the 1990 Act.

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

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**c**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent

(**a**) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), section 6(9) was amended by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c.27) and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

(**b**) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to this section that are not relevant to this Order.

(**c**) 1990 (c.43)

given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(**a**); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in compliance with a noise management scheme approved by the relevant planning authority under requirement 19 (control of noise during operational phase); or

(ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (consent for work on construction site to include statement that it does not itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

PART 4

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

10.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

11. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (which identifies cases in which land is or is not to be treated as operational land for the purposes of that Act).

(**a**) 1974 (c.40)

Certification of plans etc.

12.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

(a) the environmental statement;

(b) the existing access plan;

(c) the indicative demineralised water connection plan;

(d) the indicative drainage plan;

(e) the indicative electrical connection plan;

(f) the indicative gas supply pipeline connection plan;

(g) the indicative generating station layout plan;

(h) the indicative potable water connection and raw water connection plan;

(i) the indicative landscaping plan;

(j) the land ownership and interests schedule;

(k) the land plan; and

(l) the works plan

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

13. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals etc.

14.—(1) Where an application is made to, or a request is made of the relevant planning authority, a highway authority, or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 2 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Name
Position
Date Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

AUTHORISED DEVELOPMENT AND REQUIREMENTS

PART 1

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising—

Work No. 1 – an electricity generating station located on land within the Wilton International site, Teesside, with a nominal net electrical output capacity of up to 1,700 MWe at ISO Conditions, comprising—

1. Work No. 1A – up to two separate generating units, with each generating unit including—

(a) gas turbine, steam turbine and electricity generator within a turbine building;

(b) heat recovery steam generator ("hrsg") in building;

(c) hrsg feed water system including deaerator, boiler water feed pumps and associated piping;

(d) condenser;

(e) main stack;

(f) transformers;

(g) auxiliary boiler and vent;

(h) condensate polisher;

(i) boiler feed pumps;

(j) auxiliary electrical modules;

(k) emission monitoring system;

(l) blow down tank;

(m) fuel gas coalescing filter;

(n) gas turbine air inlet house;

(o) fuel gas drains tank;

(p) fuel gas flow measurement system;

(q) fuel gas performance heater;

(r) hydrogen module;

(s) condensate storage tank and make-up pump;

(t) CO2 module;

(u) battery room module; and

(v) fire suppressant module.

2. In addition to the generating units, Work No. 1 will comprise any of the following further elements of cooling infrastructure which together comprise Work No. 1B —

(a) up to two banks of hybrid cooling towers;

(b) cooling water pumps;

(c) chemical sampling and dosing plant with electrical modules; and

(d) cooling water treatment.

3. In connection with and in addition to Works 1A and 1B Work No.1 will include:

(a) an above ground installation ("AGI");

(b) gas receiving station/pig trap system;

(c) grid and gas connection works;

(d) general and unit services main control centre container;

(e) fire-fighting and raw storage water tank and fire water retention basin;

(f) de-mineralised water storage tank;

(g) surface and foul drainage including trade effluent and foul water discharge points, oil water separator and septic tanks;

(h) connections to drainage system;

(i) connections to utility points;

(j) control building including workshop and stores;

(k) administration building;

(l) unit transformer and electricity substation connection;

(m) distribution systems, pipework and pipe runs;

(n) AGI utility rooms;

(o) telecommunications network;

(p) western boundary sound wall;

(q) southern boundary sound wall;

(r) hardstanding and hard and soft landscaping;

(s) site access; and

(t) security gatehouse, fencing and CCTV.

Work No. 2 – associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1 which will comprise any of the following further elements—

4. Work No. 2A comprising —

(a) permanent laydown area;

(b) vehicle parking;

(c) internal roadways and footpaths;

(d) lighting columns and lighting; and

(e) signage.

5. Area reserved for carbon capture, compression and storage, such area to be laid out as vehicle parking and used for the open and covered storage of construction materials and equipment during construction of any part of the authorised development, which will comprise of any of the following further elements which together comprise Work No. 2B—

(a) laydown area including contractor compounds and cabins and wheel washing facilities;

(b) vehicle parking spaces;

(c) internal roadways and footpaths;

(d) lighting columns and lighting;

(e) hardstanding;

(f) surface and foul drainage; and

(g) signage.

and to the extent that they do not form part of any such work, further associated development comprising such other ancillary buildings, structures, enclosures, plant, works or operations as are integral to and part of the construction, operation and maintenance of the works in this Schedule 1 but only within the Order limits and insofar as they will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

REQUIREMENTS

Interpretation

1. In this Part of this Schedule---

"capture equipment" means the plant and equipment required to capture and compress the target carbon dioxide and identified as such in the current CCS proposal;

"CHP assessment" means the combined heat and power assessment contained in document APP-038, undertaken in line with the requirements of National Policy Statements NPS EN-1 and EN-2 and the Environment Agency Guidance entitled "CHP Ready Guidance for Combustion and Energy from Waste Power Plants";

"CCS" means carbon capture and storage;

"CCS proposal" means a proposal for the capture, transport and storage of the target carbon dioxide which identifies the proposed technology, transport route and storage location for the authorised development;

"the CCS site" means an area within the area cross hatched blue on the works plan and described as Work No. 2B in Part 1 of this Schedule;

"CEMP" means the draft construction environmental management plan contained in Annex L of the environmental statement;

"commercial use" means the generation of electricity on a commercial basis following the completion of commissioning;

"commissioning" means the process of assuring that all systems and components of the authorised development (which are installed or installation of which is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

"controlled waters" means controlled waters as defined in section 104 of the Water Resources Act 1991(**a**)

"current CCS proposal" means—

(a) the CCS proposal contained in document APP-039, set out in a feasibility study and assessed in accordance with the Department of Energy and Climate Change guidance entitled "Carbon Capture Readiness (CCR) A guidance note for section 36 Electricity Act 1986 consent applications"; or

(b) if a revised CCS proposal has been identified under requirement 22, the proposal which has most recently been so identified;

"Durham Tees Valley Airport" means Durham Tees Valley Airport Limited (company registration number 02020423) or any successor organisation or company who is authorised to operate Durham Tees Valley Aerodrome at Darlington, Tees Valley DL2 1LU;

"Environment Agency" means the non-departmental public body of that name created by section 1 of the Environment Act 1995(**a**);

(**a**) 1991 (c.57)

"existing ground level" means not more than 16.5 metres above ordnance datum;

"the generating station" means Work No. 1 in Part 1 of this Schedule;

"operational phase" means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete, which begins on the date specified in the operational phase notice and "operational" and "operation" should be construed accordingly;

"operational phase notice" means a written notice served by the undertaker on the relevant planning authority and the Environment Agency confirming that the operational phase is about to begin or has begun, in accordance with requirement 7 in Part 2 of Schedule 1;

"part of the authorised development" means Work No. 1A, Work No. 1B, Work No. 2A or Work No.2B or any part of such Work as listed in Part 1 of this Schedule;

"phase of the authorised development" means one of the generating units described in Work No. 1 as listed in Part 1 of this Schedule and any development which is associated with or ancillary to that generating unit as described in Work No.2 as listed in Part 1 of this Schedule, and "phase" and "phases" are construed accordingly;

"relevant highway authority" means the highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

"shut-down" means the period of time after construction works have finished on any particular day during which activities including workers changing out of work wear, workers departing the site, post-works briefings and meetings and closing and securing of the site take place;

"start-up" means the period of time prior to construction works commencing on any particular day during which activities including the arrival of construction workers, changing into work wear and pre-works briefings and meetings take place; and

"Wildlife Trust" means the Tees Valley Wildlife Trust (registered charity number 511068).

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not be commenced until a written scheme setting the proposed phasing of the authorised development has been submitted to and approved by the relevant planning authority.

(3) Notice of intention to commence each phase of the authorised development must be provided to the relevant planning authority a minimum of fourteen days before the date that phase of the authorised development is commenced.

(4) The final phase of the authorised development must not be commenced after the expiration of five years from the date of the operational phase notice served in relation to the previous phase of the authorised development.

Notice of commencement and completion of commissioning

3.—(1) Notice of the intended start of commissioning of each phase of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commissioning of each phase is started.

(2) Notice of the intended completion of commissioning of each phase of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within fourteen days from the date that commissioning of each phase is completed.

(**a**) 1995 (c.25).

Detailed design

4.—(1) No phase of the authorised development may commence other than preliminary works until details of the following relating to that phase have been submitted to and approved in writing by the relevant planning authority:

(a) the siting, design, external appearance and dimensions of all buildings and structures comprising the authorised development which are to be retained following commissioning;

(b) the colour, materials and surface finishes in respect of those buildings and structures referred to in sub-paragraph (a);

(c) the permanent circulation roads, vehicle parking and hardstanding; and

(d) ground levels and heights of all permanent buildings and structures together with cross-sections through the site showing existing and proposed ground levels

(2) The details approved under sub-paragraph (1) must be in accordance with the following thresholds—

(a) Maximum number of main stacks 2

(b) Maximum height of main stacks 75 metres above existing ground level

(c) Maximum height of turbine buildings 32 metres above existing ground level

(d) Maximum height of heat recovery steam generator buildings 45 metres above existing ground level (including vents)

(e) Maximum height of auxiliary boiler vents 35 metres above existing ground level

(f) Maximum height of cooling towers 25 metres above existing ground level

(g) Maximum height of other buildings and structures 20 metres above existing ground level.

(3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1) and any other plans, drawings, documents, details, schemes, statements or strategies which are approved by the relevant planning authority pursuant to any Requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 27.

External lighting

5.—(1) No phase of the authorised development may commence other than preliminary works until a scheme (which accords with the Guidance Notes for the Reduction of Obtrusive Light GN01:2011 and which may form part of the construction environment management plan approved under requirement 13) for all external lighting to be installed during construction of that phase has been submitted to and approved by the relevant planning authority.

(2) No phase of the authorised development may be brought into operation until a scheme (which accords with the Guidance Notes for the Reduction of Obtrusive Light GN01:2011) for all permanent external lighting to be installed in relation to that phase has been submitted to and approved by the relevant planning authority.

(3) The scheme approved pursuant to subsection (1) above must be implemented as approved prior to construction and maintained thereafter and the scheme approved pursuant to subsection (2) above must be implemented as approved prior to operation and maintained thereafter.

Fencing and other means of enclosure

6.—(1) No phase of the authorised development may commence other than preliminary works until written details of all proposed temporary and permanent fences, walls or other means of enclosure relating to that phase have been submitted to and approved by the relevant planning authority.

(2) The fencing and other means of enclosure must be installed as approved.

(3) All construction sites must remain securely fenced at all times during construction of the authorised development.

(4) Any temporary fencing must be removed on completion of the relevant phase of the authorised development.

Notice of commencement of operation

7. Notice of the intended start of operation of each phase of the authorised development must be given to the relevant planning authority and the Environment Agency, where practicable prior to such start and in any event within fourteen days from the date operation of that phase of the authorised development starts.

Highway accesses

8.—(1) No phase of the authorised development may commence other than preliminary works until a written scheme setting out details of the following have been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority:

(a) arrangements for vehicular access to and egress from the site during the construction of the authorised development; and

(b) any permanent arrangements for vehicular access to and egress from the site (including any associated directional signage).

(2) The access to and egress from the site must be operated in accordance with the approved details during construction and operation of the authorised development.

(3) No phase of the authorised development may be brought into operation until any approved signage referred to in sub-paragraph (1) (b) above as may be required has been installed.

Temporary buildings and structures

9.—(1) No phase of the authorised development may commence other than preliminary works until a written scheme relating to that phase in accordance with sub-paragraph (2) has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include details of—

(a) the siting, design and external appearance of temporary buildings and structures to be erected and used during the period of construction; and

(b) temporary circulation roads, parking and hardstanding, laydown areas and turning facilities to be installed and used during the period of construction.

(3) The scheme under sub-paragraph (2) must be implemented as approved and thereafter adhered to throughout the construction of that phase of the authorised development.

(4) Save for temporary fencing which is subject to requirement 6 above, all temporary works relating to a particular phase of the authorised development must be removed within a period of twelve calendar months following commencement of the operational phase of that phase of the authorised development unless otherwise approved in writing by the relevant planning authority.

Contaminated land and groundwater

10.—(1) If, during construction of the authorised development, contaminated land or groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, is encountered in excavations of the Order land, then work in the vicinity of that contamination must be suspended, additional investigation and assessment must be carried out, and a written scheme detailing how the contamination will be addressed must be submitted to, and after consultation with the Environment Agency, approved in writing by the relevant planning authority prior to any works resuming.

(2) Remediation must be implemented in accordance with the scheme approved pursuant to sub-paragraph (1) prior to any works resuming.

Ground nesting birds statement

11.—(1) No works in relation to any phase of the authorised development may begin between the months of March and August inclusive, until a written ground nesting birds statement, including any proposed survey and mitigation scheme that may be required (which may form phase of the construction environment management plan approved under requirement 13) has been submitted to and approved in writing by the relevant planning authority in consultation with the Wildlife Trust.

(2) The ground nesting birds survey and mitigation scheme must include an implementation timetable and must be implemented as approved if any works in relation to any phase of the authorised development begins between the months of March and August inclusive.

Landscaping

12.—(1) No part of the authorised development comprised in Work No. 1 may commence other than preliminary works until a written landscaping scheme has been submitted to and approved in writing by the relevant planning authority.

(2) The landscaping scheme must be based on the indicative landscaping plan and must include details of all proposed hard and soft landscaping works, including—

(a) location, number, species, size and planting density of any proposed planting;

(b) cultivation, importing of materials and other operations to ensure establishment;

(c) hard surfacing materials; and

(d) implementation timetables for all landscaping works.

(3) The landscaping scheme must be implemented as approved and any shrub or tree which is planted pursuant to the scheme which, within a period of five years after planting, dies or becomes seriously damaged or diseased, must be replaced in the first available planting season with a specimen of similar species and size as that which was originally planted.

Construction environmental management plan ("CEMP")

13.—(1) No phase of the authorised development may commence other than preliminary works until a CEMP relating to that phase, which accords with the principles set out in the draft CEMP contained in Annex L of the environmental statement has been submitted to and approved in writing by the relevant planning authority in consultation with both the Environment Agency and the relevant highway authority.

(2) The CEMP must in particular include—

(a) a code of construction practice, specifying mitigation and management measures designed to minimise the impacts of construction works, addressing—

(i) external lighting;

(ii) noise;

(iii) air quality including dust;

(iv) construction hours, subject always to sub-paragraph (d), being between 0700 and 1900 hours on weekdays and 0800 and 1800 hours on Saturdays and no construction work shall take place on Sundays or public holidays; save—

(aa) where continuous periods of construction work are required, including works such as concrete pouring and works comprising non-intrusive and internal activities, such as start-up and shut-down, electrical installation, building fit-out and non-destructive testing;

(bb) for the delivery of abnormal loads, which may cause congestion on the local road network;

(cc) where works are urgently necessary in the interests of safety or health; or

(dd) during such periods and in such locations as are otherwise agreed in writing with the relevant planning authority.

All construction works which are to be undertaken outside the hours of 0700 and 1900 on weekdays and 0800 and 1800 on Saturdays must be agreed with the relevant planning authority in writing in advance, and must be carried out within the subsequently agreed times;

(b) details of the delivery to and storage of construction materials on the site;

(c) a considerate constructors scheme;

(d) a scheme for the notification of any significant construction impacts on local residents to local residents and the relevant planning authority;

(e) a scheme for impact piling, or other means of pile driving, addressing methods and duration of piling and stating the criteria according to which pile driving is chosen, which must require impact piling to be limited to the following times—

(i) Monday to Friday: 0900–1800 hours;

(ii) Saturday: 0900–1300 hours; and

(iii) no impact piling on Sunday or Bank Holidays

unless such impact piling is required because of an emergency;

(f) written details of the surface water drainage systems (including means of pollution control and an assessment of the risks to, and mitigation measures designed to protect controlled waters) to be employed during the construction of that phase of the authorised development;

(g) details of monitoring measures.

(3) All construction works must be implemented in accordance with the CEMP.

Waste management during construction

14.—(1) No phase of the authorised development may commence other than preliminary works until the relevant planning authority has received and approved in writing a site waste management plan relating to the construction of that phase of the authorised development.

(2) The plan must incorporate the principles in, and be based on the draft site waste management plan contained in Annex D4 of the environmental statement and must address and include at least the following—

(a) the storage of waste materials on site;

(b) removal of waste materials from the site for recovery/disposal at appropriately licensed sites;

(c) a materials management plan;

(d) a sediment control plan; and

(e) monitoring measures.

(3) The approved waste management plan must be implemented as approved and maintained during construction of that phase of the authorised development.

Construction transport management plan

15.—(1) No phase of the authorised development may commence other than preliminary works until a construction transport management plan relating to that phase has been submitted to and approved in writing by the relevant planning authority.

(2) The plan referred to in sub-paragraph (1) must be based on the draft construction transport management plan contained in Annex I2 of the environmental statement and must address construction traffic to and from the site, including details of:

(a) the proposed routeing scheduling and management of abnormal indivisible loads;

(b) the proposed routeing of delivery vehicles;

(c) how the site will be accessed and egressed;

(d) the loading and unloading facilities and arrangements that will be provided and implemented;

(e) the turning facilities that will be provided; and

(f) the vehicle parking arrangements that will be implemented

during construction of the authorised development.

(3) The approved construction transport management plan must be implemented as approved and maintained during construction of that phase of the authorised development.

(4) In this requirement "abnormal indivisible load" has the same meaning as in the Road Vehicles (Authorisation of Special Types)(General) Order 2003(**a**)

Surface water drainage – operational

16.—(1) No phase of the authorised development shall come into operation until written details of the surface water drainage system (including means of pollution control) relating to that phase have been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) The surface water drainage system must be constructed in accordance with the approved details before the operational phase of that phase of the authorised development commences and must thereafter be managed and maintained in accordance with the approved details.

Air safety

17.—(1) No part of the authorised development comprised in Work No.1 may commence other than preliminary works until the undertaker has notified the Ministry of Defence and Durham Tees Valley Airport of—

(a) the precise location of the authorised development with grid coordinates;

(b) the proposed date of commencement of construction;

(c) the height above ground level in metres of the tallest structure; and

(d) the maximum extension height in metres of any construction equipment.

(2) Within 28 days of completion of the construction of the generating unit in either phase of the authorised development the undertaker must notify the Ministry of Defence and Durham Tees Valley Airport of the date of such completion of construction.

Waste management during operational phase

18.—(1) The authorised development must not be brought into operation until the relevant planning authority has received and approved in writing a waste management plan for the operational phase of the authorised development which addresses and includes at least the following—

(a) the storage of waste materials on site;

(b) removal of waste materials from the site for recovery/disposal at appropriately licensed sites;

(c) the return/disposal of general engineering wastes (such as spent filters and used parts).

(2) The authorised development must thereafter be operated fully in accordance with the approved plan.

(**a**) S.I. 2003/1998

Control of noise during operational phase

19.—(1) No phase of the authorised development can be commissioned until a written programme for the monitoring and control of noise during the operational phase of that phase of the authorised development has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The programme submitted and approved must specify—

(a) each location from which noise is to be measured;

(b) the method of noise measurement, which must be in accordance with British Standard 4142:2014;

(c) the maximum permitted levels of noise at each monitoring location (such levels not to exceed 3 decibels above a baseline to be agreed in writing with the relevant planning authority);

(d) provision requiring the undertaker to take noise measurements as soon as possible following a request by the relevant planning authority and to submit the measurements to the relevant planning authority as soon as they are available;

(e) details relating to

(i) the rebuilding of the western boundary sound wall;

(ii) any works that may be required to any parts of the southern boundary sound wall; and

(iii) the subsequent maintenance of the western boundary sound wall and the southern boundary sound wall thereafter; and

(f) the measures to be implemented in the event that any audible acoustic tonal noise is detected from any of the locations referred to in sub-paragraph (a) in the programme approved pursuant to sub-paragraph (1), to ensure such audible acoustic tonal noise is negated.

(3) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the programme, except—

(a) in the case of an emergency,

(b) with the prior approval of the relevant planning authority, or

(c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with sub-paragraph (4).

(4) Except in the case of an emergency, the undertaker must give the relevant planning authority 24 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(5) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the programme because of an emergency—

(a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—

(i) the nature of the emergency, and

(ii) why it was necessary for the level of noise to have exceeded the maximum permitted level; and

(b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—

(i) the reasons for the emergency, and

(ii) how long it expects the emergency to last.

(6) The authorised development must not be commissioned until the western boundary sound wall is fully rebuilt and any necessary works to the southern boundary sound wall have been carried out in accordance with the details approved pursuant to sub-paragraph (2) (e) above.

Combined heat and power

20.—(1) The authorised development must not be brought into operation until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the relevant planning authority for its approval a report ("the CHP review") updating the CHP assessment.

(4) The CHP review submitted and approved must—

(a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and

(b) include a list of actions (if any) that the undertaker is reasonably able to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included in the approved CHP review, within the timescales specified, unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development that is four years after the date on which it last submitted the CHP review, or a revised CHP review, to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

(8) Sub-paragraphs (1) to (7) of this requirement will cease to have effect as soon as any of the following events occurs—

(a) the generating station is supplying process or space heating to off-site users; or

(b) the generating station is decommissioned; or

(c) the relevant planning authority's agreement to the undertaker not taking any such action and having no current or future CHP proposals has been obtained in writing; or

(d) the need to maintain space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems ceases to be included in planning policy as from time to time in force; or

(e) the need to submit a CHP review ceases to be included in national or local planning policy as from time to time in force.

CCS site

21. Until such time as the generating station is decommissioned, the undertaker must not, without the written consent of the Secretary of State—

(a) dispose of any interest in the CCS site; or

(b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such occurrence, to prepare the

CCS site for the installation and operation of the capture equipment, should it be deemed necessary to do so.

CCS monitoring report

22.—(1) The undertaker must submit a report ("CCS monitoring report") to the Secretary of State—

(a) on or before the date on which three months have passed from commencement of operation of any phase of the authorised development; and

(b) on the date falling two years after the date the first CCS monitoring report is made and every two years thereafter.

(2) Each CCS monitoring report must provide evidence that the undertaker has complied with requirement 21—

(a) in the case of the first CCS monitoring report, since this Order was made; and

(b) in the case of any subsequent report, since the making of the previous CCS monitoring report, and must explain how the undertaker expects to continue to comply with requirement 21 over the next two years.

(3) Each CCS monitoring report must state whether the undertaker considers that some or all of the technology referred to in the current CCS proposal will not work and identify any other impediment to the technical feasibility of the current CCS proposal, explaining the reasons for any such conclusion and whether such impediments could be overcome. If the undertaker considers that technical impediments could be overcome by putting forward a revised CCS proposal, this should be included in the CCS monitoring report.

(4) Each CCS monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of its current CCS proposal.

Applicability of requirements 21 and 22

23.—(1) Requirements 21 and 22 will cease to have effect as soon as any of the following events occurs—

(a) the capture equipment is installed; or

(b) the generating station is decommissioned; or

(c) the Secretary of State agrees in writing that requirements 21 and 22 shall cease to have effect.

(2) Requirement 21 will cease to have effect if the requirement to hold land for the installation of capture equipment ceases to be included in law or planning policy as from time to time in force.

(3) Requirement 22 will cease to have effect if the requirement to submit a CCS monitoring report ceases to be included in law or planning policy as from time to time in force.

Decommissioning

24.—(1) Within 12 months of the generating station permanently ceasing to be used for the purposes of generating electricity, a site closure and restoration plan for the demolition and removal of the generating station must be submitted for approval by the relevant planning authority. The plan must include—

(a) details of all structures and buildings to be demolished;

(b) details of the means of removal of the materials resulting from decommissioning works;

(c) details of the phasing of the demolition and removal works;

(d) details of the restoration works to restore any parts of the Order land to a condition agreed with the relevant planning authority and the phasing of such works;

(e) a timetable in which the measures identified in the scheme must be carried out; and

(f) an environment management plan for the demolition and decommissioning works addressing the relevant matters listed in requirement 13 (construction environment management plan).

(2) The demolition and removal of the generating station must be implemented in accordance with the approved plan.

Requirement for written approval

25. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details

26.—(1) All details submitted for the approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 12.

(2) The authorised development must be carried out in accordance with the approved details subject to such non-material amendments as are approved in writing by the relevant planning authority.

Amendments to approved details

27.—(1) With respect to any requirement which requires the authorised development or any part of it to be carried out in accordance with the details, thresholds, plans or schemes approved under this Schedule, the approved details, thresholds, plans or schemes are, subject to sub-paragraph (2), taken to include any amendments or variations that may subsequently be approved in writing by the relevant planning authority in consultation with any other consultee specified in the requirement in question, or approved in writing by the relevant planning authority or another approval authority.

(2) Any amendments to or variations from any details, thresholds, plans or schemes approved pursuant to these requirements must be minor or immaterial and in order to obtain approval to such amendments or variations it must be demonstrated to the reasonable satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Accident and emergency response

28.—(1) No phase of the authorised development may commence other than preliminary works until an accident and emergency response plan for that phase has been submitted to and approved in writing by the relevant planning authority.

(2) The accident and emergency response plan must be implemented as approved prior to commencement of development and maintained during the operation of the authorised development.

SCHEDULE 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation of Schedule 2

1. In this Schedule 2—

"appeal documents" means the application and documents referred to in paragraph 5(2)(a) of this Schedule

"appeal parties" means the relevant planning authority, the requirement consultee and the undertaker and "appeal party" shall be construed accordingly;

"appointed person" means a person appointed by the Secretary of State to determine an appeal pursuant to paragraph 5(2)(c);

"business day" means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(**a**); and

"requirement consultee" means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

Applications made under requirements

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of their decision on the application within a period of thirty business days beginning with—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

(c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

(a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;

(b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and

(c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison to the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such further information from the undertaker as is reasonably necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, then the relevant planning authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(**a**) 1971 c.80

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application.

(4) On receipt of a consultation pursuant to sub-paragraph (3) and in the event the requirement consultee considers further information from the undertaker is reasonably necessary to enable it to consider the consultation it must, within ten business days of receipt of the consultation, notify the relevant planning authority in writing specifying the further information required.

(5) The relevant planning authority must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within twenty business days of receipt of the application.

(6) In the event that the relevant planning authority does not provide the notification or consultation as specified in sub-paragraph (2) (3) or (5) or the requirement consultee does not request any further information within ten business days of receipt of the consultation from the relevant planning authority as specified in sub-paragraph (4) the relevant planning authority is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Appeals

4.—(1) The undertaker may appeal if—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by—

(i) a requirement and any document referred to in any requirement; or

(ii) any other consent, agreement or approval required under this Order,

or grants it subject to conditions;

(b) the relevant planning authority does not give notice of its decision to the undertaker within the period specified in paragraph 2(1);

(c) having received a request for further information under paragraph 3(1) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) having received any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not reasonably necessary for consideration of the application

(2) The procedure for appeals is as follows—

(a) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide;

(b) the undertaker must on the same day provide copies of the appeal documents to the relevant authority and the requirement consultee (if applicable);

(c) as soon as is practicable after receiving the appeals documents the Secretary of State must appoint a person (who may or may not be a member of the Planning Inspectorate but must be a qualified town planner of at least ten year's experience) to determine the appeal and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person must be sent;

(d) the relevant authority and the requirement consultee (if applicable) may submit any written representations in respect of the appeal to the appointed person within ten business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the appeal parties may make any counter-submissions to the appointed person within ten business days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information must be submitted, such date to be at least seven business days after the date the appointed person sends their notification.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person unless otherwise agreed in writing between the appointed person and the appeal parties.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations referred to in sub-paragraph (5) above must be submitted to the appointed person and made available to all appeal parties within ten business days of the date mentioned in sub-paragraph (3).

Outcome of appeals

5.—(1) On an appeal under paragraph 3, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(5) Any consent, agreement or approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purpose of Part 2 of Schedule 1 (requirements) as if it had been given by the relevant planning authority.

(6) The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid.

(9) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is made, the appointed person must have regard to the Planning Practice Guidance or any guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Sembcorp Utilities (UK) Limited, to construct, operate and maintain an electricity generating station located on land within the Wilton International site, Teesside, with a nominal net electrical output capacity of up to 1,700 MWe at ISO Conditions together with all necessary and associated development.

The Order also provides a defence in proceedings in respect of statutory nuisance.

A copy of the plans referred to in this Order and certified in accordance with article 12 may be inspected free of charge between the hours of 9am to 5pm at the offices of Redcar and Cleveland Borough Council, Redcar & Cleveland House, Kirkleatham Street, Redcar TS10 1RT.