

## **VPI Immingham OCGT Project**

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### **The Immingham Open Cycle Gas Turbine Order**

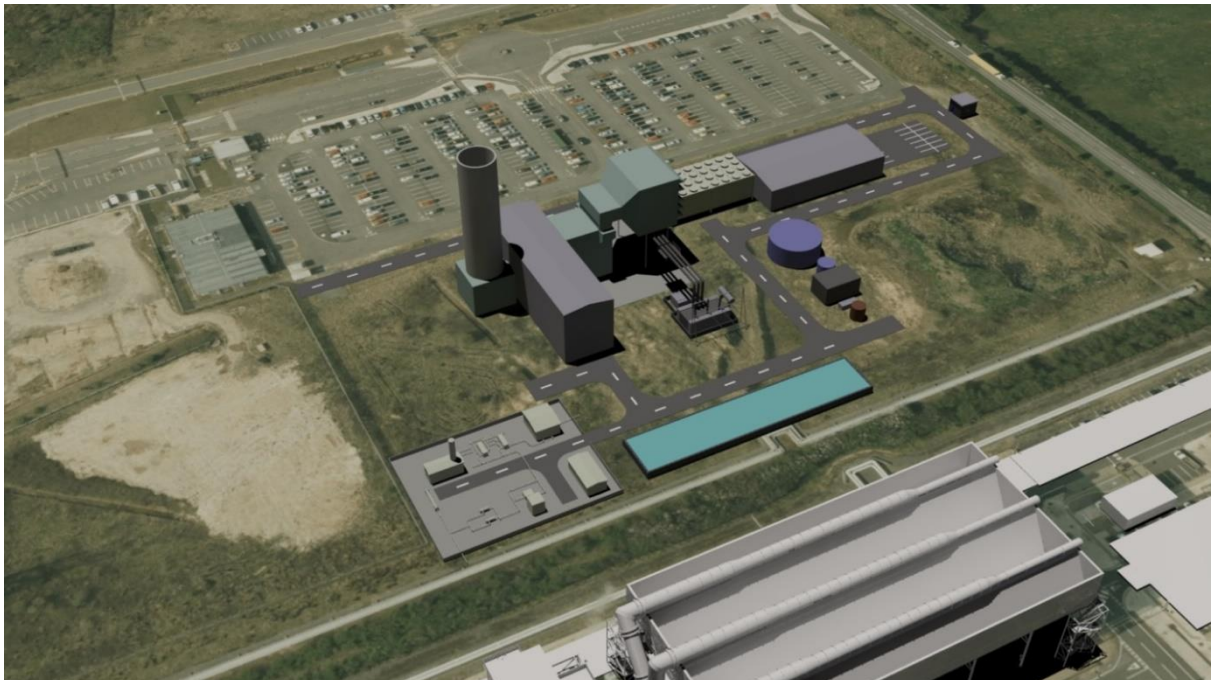
**Land at and in the vicinity of the existing VPI Immingham Power Station, South Killingholme, North Lincolnshire, DN40 3DZ**

## **Statement of Reasons**

**The Planning Act 2008**

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(h)**

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**Applicant: VPI Immingham B Ltd**

**Date: April 2019**

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<b>Author</b>	Emma O’Gorman (EO)		
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<b>Approved By</b>	Nick McDonald (NM)		
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## GLOSSARY

<b>Abbreviation</b>	<b>Description</b>
PA 2008	The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.
Access	Work No. 2 – access works comprising access to the OCGT Power Station Site and access to Work Nos. 3, 4, 5 and 6
AGI	Above Ground Installation – installations used to support the safe and efficient operation of the pipeline; above ground installations are needed at the start and end of a gas pipeline and at intervals along the route.
APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Sets out detailed procedures that must be followed for submitting and publicising applications for Nationally Significant Infrastructure Projects.
Applicant	VPI Immingham B Ltd or VPIB
Application	The Application for a Development Consent Order made to the Secretary of State under Section 37 of the Planning Act 2008 in respect of the Proposed Development, required pursuant to Section 31 of the Planning Act 2008 because the Proposed Development is a Nationally Significant Infrastructure Project under Section 14(1)(a) and Section 15 of the Planning Act 2008 by virtue of being an onshore generating station in England of more than 50 Megawatts electrical capacity of more.
Associated Development	Defined under S.115(2) of The Planning Act 2008 as development which is associated with the principal development (the NSIP) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development, or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
BEIS	Department for Business, Energy and Industrial Strategy
DCO	A Development Consent Order made by the relevant Secretary of State pursuant to the Planning Act 2008 to authorise a Nationally Significant Infrastructure Project. A DCO can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.
EIA	Environmental Impact Assessment – a term used for the assessment of environmental consequences (positive or negative)

Abbreviation	Description
	of a plan, policy, program or project prior to the decision to move forward with the proposed action.
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the environmental assessment of Nationally Significant Infrastructure Projects must be carried out and the procedures that must be followed
EN-1	the Overarching National Policy Statement for Energy, Department of Energy and Climate Change, 2011
EN-2	the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure, Department of Energy and Climate Change, 2011
EN-4	the National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines, Department of Energy and Climate Change, 2011
EN-5	the National Policy Statement for Electricity Networks Infrastructure, Department of Energy and Climate Change, 2011
ES	Environmental Statement – a report in which the process and results of an Environmental Impact Assessment are documented
Existing AGI	The existing AGI within the Existing VPI CHP Plant Site
Existing AGI Site	The land comprising the Existing AGI, within the Existing VPI CHP Plant Site
Existing Gas Pipeline	An existing underground gas pipeline owned by VPI LLP connecting the Existing AGI Site to an existing tie in the National Grid (NG) Feeder No.9 located to the west of South Killingholme
Existing Gas Pipeline Site	The land comprising the Existing Gas Pipeline and a stand-off either side of it
Existing VPI CHP Plant	The existing VPI combined heat and power plant
Existing VPI CHP Plant Site	The land comprising the Existing VPI CHP Plant, located to the south of the OCGT Power Station Site
Ha	Hectares. A metric measurement of area.
Land Plans	A plan showing the land over which interests or rights in land are sought as part of the Order
Limits of deviation	The lateral limits shown on the Works Plan submitted as part of the Application and within which the Proposed Development may occur
NSIP	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under the 2008 Act.
NTS	National transmission system.
NELC	North East Lincolnshire Council.
NLC	North Lincolnshire Council.
OCGT	Open Cycle Gas Turbine.
OCGT Power Station	Work No. 1 – an OCGT power station with a gross capacity of up to 299MW
OCGT Power Station Site	The land required for Work No.1
Order	The Immingham Open Gas Fired Generating Station Order 20[x], being the DCO that would be made by the Secretary of State authorising the Project, a draft of which has been submitted as part of the Application.

<b>Abbreviation</b>	<b>Description</b>
Order Land	The area over which powers of compulsory acquisition or temporary possession are sought in the DCO, shown on the Land Plans. The Order land is the same area as the Project Land
Order Limits	The area in which consent to carry out works is sought in the DCO, the area is split into different Work Numbers which are set out Schedule 1 to the DCO and shown on the Works Plans. The Order limits is the same area as the Site
PINS	Planning Inspectorate – executive agency of the Ministry of Housing, Communities and Local Government of the United Kingdom Government. It is responsible for examining applications for NSIPs, and reporting to the Secretary of State who makes a final decision on such applications.
Project Land	The land required for the Proposed Development (the Site) and the land comprising the Existing Gas Pipeline Site. The Project Land is the same as the 'Order land' (in the DCO).
Proposed Development	The construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 MW, including electrical and gas supply connections, and other associated development.
Requirements	The 'requirements' at Schedule 2 to the Order that, amongst other matters, are intended to control the final details of the Project as to be constructed and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts.
Site	The land required for the Proposed Development, and which is the same as the 'Order limits' (in the DCO)
SoS	The Secretary of State. The decision maker for DCO applications and head of Government department. In this case the SoS for the Department for Business, Energy and Industrial Strategy
Statement of Reasons	This document - a statement setting out the reasons and justification for the compulsory acquisition of land or rights in land within the Order Limits.
Temporary Construction and Laydown	Work No. 3 – temporary construction and laydown areas comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns. There are three construction and laydown areas included in the Application.
Temporary Construction and Laydown Site	Land Required for Work No. 3
VPIB	VPI Immingham B Ltd (the Applicant)
VPI LLP	VPI Immingham LLP – the owner and operator of the Existing VPI CHP Plant
Work No.	Work number, a component of the Proposed Development, described at Schedule 1 to the Order
Work No.1	An OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299MW.
Work No.2	Access works (the 'Access Site'), comprising access to the Main OCGT Power Station Site and access to Work Nos. 3, 4, 5 and 6.

<b>Abbreviation</b>	<b>Description</b>
Work No.3	Temporary construction and laydown area (the 'Temporary Construction and Laydown') comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns;
Work No.4	An underground and overground gas pipeline (the 'Gas Connection') of up to 600 mm (nominal internal diameter) for the transport of natural gas to Work No. 1.
Work No.5	An electrical connection (the 'Electrical Connection') of up to 400 kilovolts and control systems.
Work No.6	Utilities and services connections (the 'Utilities and Services Connections').
Works Plans	Plans showing the Work Nos. referred to at Schedule 1 to the Order and which together make up the Proposed Development.

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## 1. Summary

- 1.1.1 This Statement of Reasons has been prepared on behalf of VPI Immingham B Ltd ('VPIB' or the 'Applicant'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO') submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy under section 37 of the Planning Act 2008' (the 'PA 2008').
- 1.1.2 VPIB is seeking development consent for the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 megawatts ('MW'), including electrical and gas supply connections and other associated development (the 'Proposed Development'). The Proposed Development is primarily located on land (the 'Site') to the north of the existing VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire, DN40 3DZ.
- 1.1.3 In addition to the Site, the Application includes provision for the use of an existing gas pipeline (the 'Existing Gas Pipeline') to provide fuel to the Proposed Development. The route of the pipeline runs from a connection point at an above ground installation (the 'Existing AGI Site') within the Existing VPI CHP Plant Site to a tie in point at the existing National Grid ('NG') Feeder No.9 located to the west of South Killingholme.
- 1.1.4 The Applicant is not seeking consent to carry out any works to the Existing Gas Pipeline and, as a result, it does not form part of the Site or Proposed Development. However, the Existing Gas Pipeline is included in the Application on the basis that the Applicant is seeking powers of compulsory acquisition over it, to use and maintain it to ensure that the Proposed Development can operate.
- 1.1.5 The Site and the Existing Gas Pipeline together comprise the Order land (or 'Project Land') for the Application.
- 1.1.6 This Statement of Reasons explains why it is necessary, proportionate and justifiable for the Application to seek powers of compulsory acquisition within the Order land and why there is a compelling case in the public interest for VPIB to be granted these powers. The matters addressed in this Statement of Reasons are summarised in this section.

## 1.2 VPI Immingham LLP and VPIB

- 1.2.1 VPI Immingham LLP ('VPI LLP') owns and operates the existing VPI Immingham Power Station, one of the largest combined heat and power ('CHP') plants in Europe, capable of generating 1,240 MW (about 2.5% of UK peak electricity demand) and up to 930 tonnes of steam per hour (hereafter referred to as the 'Existing VPI CHP Plant'). The steam is used by nearby oil refineries to turn crude oil into products, such as gasoline. The land comprising the Existing VPI CHP Plant is hereafter referred to as the 'Existing VPI CHP Plant Site'.
- 1.2.2 VPI LLP is a wholly owned subsidiary of the Vitol Group ('Vitol'), founded in 1966 in Rotterdam, the Netherlands. VPIB has been formed as a separate entity for the purpose of developing and operating the Proposed Development.



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### **1.3 Details of the Proposed Development (Section 3)**

- 1.3.1 The Proposed Development is arranged in Schedule 1 to the Draft DCO (Application Document Ref. 2.1) in 'Work Numbers' (or 'Work No. '), each of which relates to a particular element of the Proposed Development. The area within which each of the main components of the Proposed Development are to be built are shown by the coloured and hatched areas on the Work Plans (Application Document Ref: 4.3). The following is a brief description of the Proposed Development, considering each Work No. in turn.
- 1.3.2 Work No. 1 – an OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299MW.
- 1.3.3 Work No. 2 – access works (the 'Access'), comprising access to the OCGT Power Station and access to Work Nos. 3, 4, 5 and 6. This comprises two existing access points from Rosper Road, one leading into the Existing VPI CHP Plant and the other leading into the Total Lindsey Oil Refinery ('TLOR').
- 1.3.4 Work No. 3 – temporary construction and laydown area ('Temporary Construction and Laydown') comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking and related development and activities.
- 1.3.5 Work No. 4 – gas supply connection works (the 'Gas Connection') comprising an underground and/or overground gas pipeline of up to 600 millimetres (nominal internal diameter) and approximately 800 m in length, for the transport of natural gas from the Existing Gas Pipeline to Work No. 1. The Gas Connection would link into the Existing Gas Pipeline via the existing Above Ground Installation (AGI) located within the curtilage of the Existing VPI CHP Plant. The Gas Connection would follow one of two routes, both within the curtilage of the Existing VPI CHP Plant.
- 1.3.6 Work No. 5 – an electrical connection (the 'Electrical Connection') of up to 400 kilovolts. The Proposed Development would connect to the existing National Grid ('NG') substation within the Existing VPI CHP Plant, and the overground cables would be approximately 300 metres in length.
- 1.3.7 Work No. 6 – utilities and services connections (the 'Utilities and Services Connections'). Essential services and control connections will be made between the OCGT Power Station Site and the Existing VPI CHP Plant. These are necessary to ensure safe operation and control, and include water, compressed air, electrical and control cable connections, telecoms, and fire and security systems. There will also be a water connection between the existing water main in Rosper Road and the OCGT Power Station Site.
- 1.3.8 The 'associated development', for the purposes of Section 115 of the PA 2008 comprises Work Nos. 2, 4, 5 and 6 of the Proposed Development.

### **1.4 Description of the Site and Order Land (Section 4)**

- 1.4.1 The Site is located entirely within the boundary of the administrative area of North Lincolnshire Council (a unitary authority). A small part of the Existing Gas Pipeline lies within the administrative area of North East Lincolnshire Council (also a unitary authority). The boundary of the Order land (which encompasses) all aspects of the Proposed Development and the Existing Gas Pipeline is shown on the Land Plans.

1.4.2 The Site is located in an area comprising a mix of industrial and agricultural uses. In addition to the activities identified above, the land to the east of the Site and on the other side of Rosper Road comprises agricultural fields extending approximately 1km toward the Humber Estuary before industrial activities associated with the storage and export of gas and oil and other port activities commence along the banks of the Estuary itself, approximately 1.5km from the Site at its closest point.

## 1.5 The Order Land

1.5.1 The Order land comprises a number of areas adjacent to and within the Existing VPI CHP Plant Site, and the Existing Gas Pipeline Corridor:

- The OCGT Power Station Site consists of an undeveloped parcel of land of approximately 2.0 ha lying between the Existing VPI CHP Plant Site to the south, and Rosper Road to the east. Immediately to the north of it are a private car park and a number of single storey structures associated with access to TLOR. This land is owned and operated by Total, as is the TLOR;
- The Access Site - construction and operational access to the OCGT Power Station Site is proposed to be from Rosper Road by way of an area to the north of the OCGT Power Station Site, coincident with the existing access and car park associated with the TLOR. Construction and operational access to the other parts of the Site is proposed to be from Rosper Road by way of the existing entrance into the Existing VPI CHP Plant Site, and then using corridors within or adjacent to that site to access the works areas;
- Gas Connection Site – this is principally within the Existing VPI CHP Plant Site. There are two options included in the Application for the corridor, both within the curtilage of the Existing VPI CHP Plant Site: one following the route of internal roadways to the east and south; and one passing between the existing buildings in a more direct north-south configuration. Both routes end at a new tie-in at the Existing AGI Site within the Existing VPI CHP Plant Site;
- Electrical Connection Site and Utilities and Services Connections Site, to facilitate the export of electricity from the Proposed Development to the National Grid substation and other necessary utilities connections. These are also principally located in the Existing VPI CHP Plant Site, and part of the Utilities and Services Connections Site is also adjacent to the OCGT Power Station Site within Rosper Road;
- Temporary Construction and Laydown Site comprising three areas: one to the immediate east of the Existing VPI CHP Plant Site and adjacent to Rosper Road; one to the north of the OCGT Power Station Site; and one to the north west of the OCGT Power Station Site; and
- The Existing Gas Pipeline runs from the Existing AGI Site (within the Existing VPI CHP Plant) to an existing tie-in to the National Grid Gas ('NGG') Feeder 9 located to the west of South Killingholme. The Existing Gas Pipeline passes through a variety of areas and uses, including the Phillips 66 Limited refinery, under the A160 (twice), under the public railway (twice) and through a number of agricultural fields. The Applicant is seeking rights to use and maintain this pipeline and it is therefore included within the DCO Order land.

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## **1.6 Compulsory Acquisition Powers (Section 5)**

- 1.6.1 Section 120 of the PA 2008 provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted. Schedule 5 to the PA 2008 lists the matters ancillary to the development, which includes the acquisition of land, compulsorily or by agreement, and the creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement.
- 1.6.2 Section 122 of the PA 2008 provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State, in respect of the Application, is satisfied that the land is required for the development to which the DCO relates and the land is required to facilitate or is incidental to that development.
- 1.6.3 The Secretary of State must also be satisfied that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order.

## **1.7 The Need for the Compulsory Acquisition of Land and Rights (Section 6)**

- 1.7.1 Under Section 122 of the PA 2008, compulsory acquisition powers may only be granted if the Secretary of State is satisfied that the land is required for the Proposed Development, or is required to facilitate it or is incidental to it, and if there is a compelling case in the public interest for inclusion of the powers.
- 1.7.2 The Guidance related to procedures for the compulsory acquisition of land (DCLG, September 2013) also states that: all reasonable alternatives to compulsory acquisition (including modifications to the Proposed Development) should be explored; that the proposed interference with the rights of those with an interest in the land must be for a legitimate purpose and be necessary and proportionate; that VPIB must have a clear idea of how it intends to use the land which it is proposed to acquire; that there is a reasonable prospect of the requisite funds for the acquisition becoming available; and that the purposes for which compulsory acquisition of land powers are included in the DCO are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.
- 1.7.3 All of these matters are considered in this Statement of Reasons, other than the availability of funding which is set out in the Funding Statement (Application Document Ref. 3.3).
- 1.7.4 VPIB requires powers of compulsory acquisition to ensure that the Proposed Development can be built, maintained and operated, and so that the Government's policy in relation to the timely delivery of new generating capacity is met within a reasonable timescale.
- 1.7.5 VPIB has sought compulsory acquisition and possession powers within the whole of the Order land, even where some of that land (e.g. the OCGT Power Station Site) is within its control. This approach has been adopted to address a number of potential proprietary impediments, including the existence of unknown ownerships, unknown rights or restrictions over the Order land, the potential for land agreements not to be completed and to overcome any restriction on VPI LLP sharing the use of the Existing Gas Pipeline.

- 1.7.6 There are three categories of land powers included in the Order (Application Document Ref. 2.1) – two of these are powers of compulsory acquisition of interests and the third is a power to occupy land temporarily. The powers sought are summarised below:
- All interests (including freehold) - the land over which compulsory powers are sought generally (and therefore including all interests) is shown edged red and shaded pink on the Land Plans (Application Document Ref. 4.2). This is solely the area in which the OCGT Power Station Site (Work No. 1) is proposed. Article 18 of the Order (Application Document Ref: 2.1) is relied upon in respect of this land.
  - New rights – the land over which compulsory powers are sought in respect of the creation of new rights is shown edged red and shaded blue on the Land Plans. These are the areas required for Access (Work No. 2), for the construction, operation and maintenance of the Gas Connection (Work No. 4), for the construction, operation and maintenance of the Electrical Connection (Work No. 5), for the construction, operation and maintenance of Utilities and Services Connections (Work No. 6), and for operation and maintenance of the Existing Gas Pipeline. Article 21 of the Order is relied upon in respect of the acquisition of new rights. The purposes for which new rights can be acquired are set out in Schedule 6 to the Order; and
  - Temporary use - the land in which powers of temporary use are sought is shown edged red and shaded yellow on the Land Plans. Articles 27 and 28 of the Order are relied upon in respect of this land, and as such no compulsory acquisition is sought. VPIB can only take temporary possession of the land which is listed in Schedule 8 to the Order and additionally, can take temporary possession of any other land where it has not yet exercised powers of compulsory acquisition.
- 1.7.7 In the absence of powers of compulsory acquisition, the Order land may not be assembled, uncertainty will continue to prevail and VPIB considers that its objectives and Government policy objectives would not be achieved.
- 1.7.8 Whilst seeking compulsory acquisition powers, VPIB will continue to seek to acquire the land, the temporary use of land, the rights and other interests by agreement, as well as secure the removal of matters affecting the Order Land that may impede the Proposed Development, wherever possible. This approach of making the application for powers of compulsory acquisition in the Application for the DCO and, in parallel, conducting negotiations to acquire land by agreement, accords with paragraph 26 of the Guidance.
- 1.7.9 This Statement of Reasons sets out the position in relation to the negotiations undertaken to date with affected owners, occupiers and others, (see section 6.6).
- 1.7.10 The Proposed Development requires the acquisition of land and the acquisition of / creation of rights to secure the land and rights needed to construct, operate and maintain the Proposed Development. Accordingly, there is no alternative but to seek powers of compulsory acquisition. It is considered that the 'do nothing' scenario is not appropriate given the established urgent national need for new energy generation.

- 1.7.11 The Site has been selected by VPIB, as opposed to other potentially available sites because it is currently vacant and is situated in an area immediately surrounded by major industry and power generation; has excellent electrical grid, gas, and transport links and is a brownfield site which is considered more attractive to redevelop for large scale power generation than a greenfield one; VPIB has the benefit of an option agreement in relation to the OCGT Power Station Site; the Site is remote from major conurbations, located in an established industrial area of low sensitivity; and it is adjacent to the Existing VPI CHP Plant, providing synergies with the existing workforce, services and utilities.
- 1.7.12 VPIB has not considered an alternative location for the new generating station as any alternative would require more land take and/or acquisition of new and temporary rights. Any alternative would also not provide the compelling benefits of the Proposed Development.
- 1.7.13 VPIB has sought to acquire the necessary land and rights by agreement but has not been able to do so. Whilst it will continue to seek to acquire the land and rights by voluntary agreement, it requires the powers of compulsory acquisition sought in order to provide certainty that it will have all the land required to construct and operate the Proposed Development, in order to realise its very significant public benefits.

## **1.8 Justification for the use of the Powers for Compulsory Acquisition (Section 7)**

- 1.8.1 The Proposed Development:
- meets an urgent need for new energy infrastructure;
  - is a form of economic development that is suitable in its local context;
  - minimises or mitigates adverse impacts to an acceptable degree; and
  - is compliant with NPS EN-1, NPS EN-2, NPS EN-4 and NPS EN-5 and in accordance with other decision-making factors specified in Section 104 of the PA 2008.
- 1.8.2 EN-1 clearly confirms the need that exists for all types of nationally significant energy infrastructure, including new fossil fuel generating stations; and makes clear that the Secretary of State should assess applications on the basis that this need, and its scale and urgency, has been proven.
- 1.8.3 Furthermore, EN-1 confirms that the Secretary of State should give substantial weight to the contribution that all developments would make toward satisfying this need. VPIB considers that:
- the Proposed Development will make a major contribution toward addressing the need that exists for new electricity generating capacity in the UK, and it will add to the security, diversity and resilience of UK electricity supplies and support to transition to low carbon electricity generation; and
  - there is a clear and compelling national need for the development of a new OCGT generating station, and VPIB has selected the Site on which to do so for technical, environmental and commercial reasons.

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## **1.9 Policy Support (Section 8)**

- 1.9.1 The Secretary of State has designated six energy NPSs, setting out policy relevant to the examination and determination of energy-related NSIPs. Notably, where a NPS has effect in relation to a type of NSIP development (such as energy generation), section 104 of the PA 2008 requires the Secretary of State to determine applications for NSIPs in accordance with the relevant NPSs, unless doing so would mean that one of the matters set out in section 104 would be triggered (such as the adverse impacts of the development outweighing its benefits). Section 8 of this Statement of Reasons sets out the strong policy support for the Proposed Development.
- 1.9.2 Part 4 of EN-1 sets out a number of 'assessment principles' that must be taken into account by the Secretary of State in determining applications for nationally significant energy infrastructure. General points include, given the level and urgency of need for the infrastructure covered by the energy NPSs, the requirement for the Secretary of State to start with a presumption in favour of granting consent for applications for energy NSIPs. This presumption applies unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused or any of the considerations referred to in section 104 of the 2008 Act apply.
- 1.9.3 Other assessment principles include the matters considered in the Environmental Statement ('ES'); the Conservation of Habitats and Species Regulations 2017; the consideration of alternatives; criteria for 'good design'; consideration of the feasibility of combined heat and power; consideration of the requirements of the carbon capture readiness regulation; grid connection; climate change adaptation; pollution control and environmental regulatory regimes; safety; hazardous substances; health; common law and statutory nuisance and security, amongst others. Part 5 of EN-1 lists a number of generic impacts that are relevant to most types of energy infrastructure. The other relevant NPS (here EN-2, EN-4 and EN-5) set out the factors and considerations relevant to fossil fuel generating stations, gas pipelines and electricity networks infrastructure respectively.
- 1.9.4 Other national planning and local policy may be considered 'important and relevant' to the Secretary of State's consideration of the Application, and therefore be taken into account under section 104. It is clear though, from the terms of section 104 and EN-1, that in the event of any conflict between the NPS and development plan documents, the NPS prevails. Policy of relevance includes the National Planning Policy Framework, the statutory development plan (made up of a number of documents adopted by North Lincolnshire and North East Lincolnshire Councils) and other local policy.

## **1.10 Special Considerations (Section 9)**

- 1.10.1 There is no Crown Land included in or affected by the Order land. There is no open space, common land, fuel or field garden allotment included in or affected by the Order land.
- 1.10.2 Various land interests or apparatus of statutory undertakers is affected by the Proposed Development. VPIB has included protective provisions within the Order (Schedule 9, Document Ref. 2.1) as appropriate and separately is seeking to agree these or alternative terms with each statutory undertaker.

### **1.11 Other Consents (Section 10)**

- 1.11.1 VPIB requires various other consents, as well as a DCO, in order to build and operate the Proposed Development. These include an environmental permit, land drainage consent, and a connection agreement.
- 1.11.2 VPIB is not aware of any reason why these and other consents required would not be granted and therefore does not consider that they represent an impediment to the Proposed Development proceeding. Further details on these are set out in Other Consents and Licences (Application Document Ref. 5.2).

### **1.12 Human Rights (Section 11)**

- 1.12.1 The Draft DCO, including in particular the powers of compulsory acquisition and of temporary possession have the potential to infringe the human rights of persons who own property or have rights in the land proposed to be acquired pursuant to the Order.
- 1.12.2 VPIB considers that there would be very significant public benefit arising from the making of the Order for the Proposed Development. That benefit can only be realised if the Order includes compulsory acquisition powers, and the purpose for which the land is sought (to build and operate the Proposed Development) is legitimate.
- 1.12.3 VPIB considers that there is a compelling case in the public interest for the exercise of such powers of compulsory acquisition. VPIB considers that it would, therefore, be appropriate and proportionate for the Secretary of State to make the Order, including the compulsory acquisition powers sought by VPIB.

### **1.13 Further Information (Section 12)**

- 1.13.1 Owners and occupiers of property affected by the Order who wish to negotiate a sale or discuss matters of compensation should contact Marvin Seaman of VPIB (on telephone 01469 565811 or by email [marvin.seaman@vpi-i.com](mailto:marvin.seaman@vpi-i.com)).
- 1.13.2 Provision is made by statute with regard to compensation for the compulsory acquisition of land and the depreciation value of properties. Helpful information is given in the series of booklets published by the Department for Communities and Local Government entitled "Compulsory Purchase and Compensation". Copies of these booklets are obtainable, free of charge, from: <https://www.gov.uk/government/collections/compulsory-purchase-system-guidance>.

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## 2. INTRODUCTION

### 2.1 Overview

- 2.1.1 This Statement of Reasons (Application Document Ref: 3.2) has been prepared on behalf of VPI Immingham B Ltd ('VPIB' or the 'Applicant'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO') submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy under section 37 of the Planning Act 2008' (the 'PA 2008').
- 2.1.2 VPIB is seeking development consent for the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 megawatts ('MW'), including electrical and gas supply connections and other associated development (the 'Proposed Development'). The Proposed Development is located is primarily located on land (the 'Site') to the north of the existing VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire, DN40 3DZ.
- 2.1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under section 14(1)(a) and sections 15(1) and (2) of the PA 2008. The DCO, if made by the SoS, would be known as the 'Immingham Open Cycle Gas Turbine Order' (the 'Order').

### 2.2 VPI Immingham LLP and VPIB

- 2.2.1 VPI Immingham LLP ('VPI LLP') owns and operates the existing VPI Immingham Power Station, one of the largest combined heat and power ('CHP') plants in Europe, capable of generating 1,240 MW (about 2.5% of UK peak electricity demand) and up to 930 tonnes of steam per hour (hereafter referred to as the 'Existing VPI CHP Plant'). The steam is used by nearby oil refineries to turn crude oil into products, such as gasoline. The land comprising the Existing VPI CHP Plant is hereafter referred to as the 'Existing VPI CHP Plant Site'.
- 2.2.2 VPI LLP is a wholly owned subsidiary of the Vitol Group ('Vitol'), founded in 1966 in Rotterdam, the Netherlands. Since then Vitol has grown significantly to become a major participant in world commodity markets and is now the world's largest independent energy trader. Its trading portfolio includes crude oil, oil products, liquid petroleum gas, liquid natural gas, natural gas, coal, electricity, agricultural products, metals and carbon emissions. Vitol trades with all the major national oil companies, the integrated oil majors and independent refiners and traders. For further information on VPI LLP and Vitol please visit:
- <https://www.vpi-i.com/>
- 2.2.3 VPIB has been formed as a separate entity for the purpose of developing and operating the Proposed Development.

### 2.3 The Site

- 2.3.1 The Site is primarily located on land immediately to the north of the Existing VPI CHP Plant Site, as previously stated. Immingham Dock is located approximately 1.5 kilometres ('km') to the south east of the Site at its closest point. The Humber ports



facility is located approximately 500 metres ('m') north and the Humber Refinery is located approximately 500m to the south.

- 2.3.2 The villages of South Killingholme and North Killingholme are located approximately 1.4 km and 1.6 km to the west of the Site respectively, and the town of Immingham is located approximately 1.8 km to the south east. The nearest residential property comprises a single house off Marsh Lane, located approximately 325 m to the east of the Site.
- 2.3.3 The Site comprises the following main parts:
- OCGT Power Station Site;
  - Access Site;
  - Temporary Construction and Laydown Site;
  - Gas Connection Site;
  - Existing AGI Site;
  - Electrical Connection Site; and
  - Utilities and Services Connections Site.
- 2.3.4 The OCGT Power Station Site and the majority of the Temporary Construction and Laydown Site are within the control of VPIB. VPI LLP has a lease of the Existing VPI CHP Plant Site.
- 2.3.5 The Site is located entirely within the boundary of the administrative area of North Lincolnshire Council ('NLC'), a unitary authority. The different parts of the Site are illustrated in the Works Plans (Application Document Ref: 4.3).
- 2.3.6 The Site has been selected by the Applicant for the Proposed Development, as opposed to other potentially available sites, for the following reasons:
- it comprises primarily of previously developed or disturbed land, including land within the operational envelope of the Existing VPI CHP Plant Site;
  - it is situated in an industrial setting with few immediate receptors and is not particularly sensitive from an environmental perspective;
  - it is primarily located adjacent to the Existing VPI CHP Plant, which provides visual screening and synergies in terms of the existing workforce and services;
  - it benefits from excellent grid connections (gas and electricity) on the Existing VPI CHP Plant Site; and
  - it benefits from existing highway accesses onto Rosper Road, with the latter providing a direct connection (via a short section of Humber Road) to the Strategic Highway Network (A160) a short distance to the south of the Site.
- 2.3.7 A more detailed description of the Site is provided in Environmental Statement ('ES') Volume 1 Chapter 3 'Description of the Site' (Application Document Ref: 6.2.3).

## 2.4 The Existing Gas Pipeline

- 2.4.1 In addition to the Site, the Application includes provision for the use of an existing gas pipeline (the 'Existing Gas Pipeline') to provide fuel to the Proposed Development. The Existing Gas Pipeline was originally constructed in 2003 to provide fuel to the Existing VPI CHP Plant. The route of the pipeline runs from a connection point at an above ground installation (the 'Existing AGI Site') within the Existing VPI CHP Plant Site to a tie in point at the existing National Grid ('NG') Feeder No.9 located to the west of South Killingholme.
- 2.4.2 A small part of the Existing Gas Pipeline lies within the administrative area of North East Lincolnshire District Council ('NELC'), the neighbouring local authority.
- 2.4.3 The Applicant is not seeking consent to carry out any works to the Existing Gas Pipeline and, as a result, it does not form part of the Site or Proposed Development. However, the Existing Gas Pipeline is included in the Application on the basis that the Applicant is seeking powers of compulsory acquisition over it, to use and maintain it to ensure that the Proposed Development can operate.
- 2.4.4 The Site and the Existing Gas Pipeline together comprise the Order land (or 'Project Land') for the DCO application. The area of land covered by the Existing Gas Pipeline, including a 13 m stand-off either side of it to provide for access and any future maintenance requirements, is hereafter referred to as the 'Existing Gas Pipeline Site'.
- 2.4.5 A more detailed description of the Site is provided in Environmental Statement ('ES') Volume I Chapter 3 'Description of the Site' (Application Document Ref: 6.2) and the extent of the Order land is shown on the Land Plans (Application Document Ref: 4.2).

## 2.5 The Proposed Development

- 2.5.1 The main components of the Proposed Development are summarised below, as set out in the draft DCO (Application Document Ref: 2.1):
- Work No. 1 – an OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299 megawatts;
  - Work No. 2 – access works (the 'Access'), comprising access to the OCGT Power Station and access to Work Nos. 3, 4, 5 and 6;
  - Work No. 3 – temporary construction and laydown area ('Temporary Construction and Laydown') comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns;
  - Work No. 4 – gas supply connection works (the 'Gas Connection') comprising an underground and/or overground gas pipeline of up to 600 millimetres (nominal internal diameter) and approximately 800 m in length for the transport of natural gas from the Existing Gas Pipeline to Work No. 1;
  - Work No. 5 – an electrical connection (the 'Electrical Connection') of up to 400 kilovolts and controls systems; and

- Work No 6 – utilities and services connections (the ‘Utilities and Services Connections’).
- 2.5.2 The areas within which each of the main components (the Works Nos.) of the Proposed Development are to be built are shown by the coloured and hatched areas on the Works Plans (Application Document Ref: 4.3). The ‘associated development’, for the purposes of Section 115 of the PA 2008, comprises Work Nos. 2, 4, 5 and 6 of the Proposed Development.
- 2.5.3 It is anticipated that subject to the DCO having been made by the SoS and a final investment decision by VPIB, construction work on the Proposed Development would commence in early 2021. The overall construction programme is expected to last approximately 21 months and is anticipated to be completed in late 2022, with the Proposed Development entering commercial operation later that year or early the following year. It is envisaged that the Proposed Development would have a design and operational life of at least 40 years.
- 2.5.4 A more detailed description of the Proposed Development is provided at Schedule 1 ‘Authorised Development’ of the draft DCO (Application Document Ref: 2.1) and ES Volume I, Chapter 4 ‘The Proposed Development’ (Application Document Ref: 6.2).

## **2.6 The Purpose and Structure of this Document**

- 2.6.1 This Statement of Reasons has been prepared in accordance with Regulation 5(2)(h) of the APFP Regulations and explains why it is necessary to acquire land, acquire or create rights over land, to extinguish or suspend rights over land, and to temporarily use land for the purposes of the Proposed Development, if necessary by compulsion. The Applicant considers that there is a compelling case in the public interest, in accordance with section 122 of the PA 2008, for the making of the Order and the inclusion of powers of compulsory acquisition to enable the Proposed Development to be constructed, operated and maintained. This Statement explains why VPIB considers that that is the case.

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### **3. DETAILS OF THE PROPOSED DEVELOPMENT**

- 3.1.1 This section provides further detail on the Proposed Development. The development to which the Order applies is set out at Schedule 1 to the Order (Application Document Ref: 2.1), and is called the 'authorised development' in that document. The Works Plans (Application Document Ref. 4.3) show the areas in which the parts of the Proposed Development may be constructed.
- 3.1.2 If the Order is made and following a final investment decision by VPIB, construction work is envisaged to commence in early 2021. Construction of the Proposed Development will take approximately 21 months and is anticipated to be completed in late 2022, with the Proposed Development entering commercial operation later that year, or early the following year. It is envisaged that the Proposed Development would have a design and operational life of at least 40 years, therefore decommissioning activities are currently anticipated to commence after 2062.
- 3.1.3 The Proposed Development is arranged in Schedule 1 to the Order in 'Work Numbers' (or 'Work No. '), each of which relates to a particular element of the Proposed Development. The area within which each of the main components of the Proposed Development are to be built are shown by the coloured and hatched areas on the Work Plans (Application Document Ref. 4.3). The following is a brief description of the Proposed Development, considering each Work No. in turn.
- 3.1.4 The Proposed Development will comprise the construction and operation of an Open Cycle Gas Turbine (OCGT) power station with a gross electrical output of up to 299MW, including the following elements.
- 3.1.5 Work No. 1 – an OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299MW, comprising:
- A single gas turbine;
  - An electrical generator;
  - A single stack;
  - Transformers;
  - A closed loop fin-fan cooling system and water supply;
  - Switchyard, associated switch gear and ancillary equipment;
  - Gas receiving area, including gas treatment control facilities and a gas reception building;
  - Auxiliary generator and liquid fuel tank for emergency electrical supplies;
  - Lubricating oil, hydraulic oil and chemical storage tanks and equipment;
  - Workshops and stores;
  - Electrical, control, administration and welfare buildings;
  - Above ground raw water and fire water storage tanks;

- Storm water attenuation system or similar;
  - Internal access roads and car parking;
  - Landscaping and fencing; and
  - Other infrastructure and auxiliaries.
- 3.1.6 Work No. 2 – access works (the ‘Access’), comprising access to the OCGT Power Station and access to Work Nos. 3, 4, 5 and 6. This comprises two existing access points from Rosper Road, one leading into the Existing VPI CHP Plant and the other leading into the Total Lindsey Oil Refinery (‘TLOR’).
- 3.1.7 Work No. 3 – temporary construction and laydown area (‘Temporary Construction and Laydown’) comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking and related development and activities. These areas would be used for the unloading and storage of construction materials, construction site offices and construction contractor welfare facilities and parking. Some pre-fabrication of materials and components may also be undertaken.
- 3.1.8 Work No. 4 – gas supply connection works (the ‘Gas Connection’) comprising an underground and/or overground gas pipeline of up to 600 millimetres (nominal internal diameter) and approximately 800 m in length, for the transport of natural gas from the Existing Gas Pipeline to Work No. 1. The Gas Connection would link into the Existing Gas Pipeline via the existing Above Ground Installation (AGI) located within the curtilage of the Existing VPI CHP Plant. The Gas Connection would follow one of two routes, both within the curtilage of the Existing VPI CHP Plant.
- 3.1.9 Work No. 5 – an electrical connection (the ‘Electrical Connection’) of up to 400 kilovolts. The Proposed Development would connect to the existing National Grid (‘NG’) substation within the Existing VPI CHP Plant, and the overground cables would be approximately 300 metres in length.
- 3.1.10 Work No 6 – utilities and services connections (the ‘Utilities and Services Connections’). Essential services and control connections will be made between the OCGT Power Station Site and the Existing VPI CHP Plant. These are necessary to ensure safe operation and control, and include water, compressed air, electrical and control cable connections, telecoms, and fire and security systems. There will also be a water connection between the existing water main in Rosper Road and the OCGT Power Station Site.
- 3.1.11 The ‘associated development’, for the purposes of Section 115 of the PA 2008 comprises Work Nos. 2, 4, 5 and 6 of the Proposed Development.

## 4. DESCRIPTION OF THE SITE AND ORDER LAND

4.1.1 This section describes the Site and the Existing Gas Pipeline (together the Order land), whilst the rest of this Statement discusses and provides a justification for the compulsory acquisition powers sought in respect of the Order land and considers also the land in which powers to take temporary possession are sought.

4.1.2 The Site is located entirely within the boundary of the administrative area of North Lincolnshire Council (a unitary authority). A small part of the Existing Gas Pipeline lies within the administrative area of North East Lincolnshire Council (also a unitary authority). The boundary of the Order Land (which encompasses) all aspects of the Proposed Development and the Existing Gas Pipeline is shown on the Land Plans.

### 4.2 The Surrounding Area

4.2.1 The Site is located in an area comprising a mix of industrial and agricultural uses. In addition to the activities identified above, the land to the east of the Site and on the other side of Rosper Road comprises agricultural fields extending approximately 1km toward the Humber Estuary before industrial activities associated with the storage and export of gas and oil and other port activities commence along the banks of the Estuary itself, approximately 1.5km from the Site at its closest point.

4.2.2 A railway spur runs north-south to the immediate west of the Site. The spur services the TLOR and joins the main line approximately 400m south west of the Site. The main line is the principal railway line in north east Lincolnshire running between Cleethorpes and Barton on Humber.

4.2.3 The nearest conurbations are the villages of South and North Killingholme, and the town of Immingham, all located between 1.6 and 1.8km from the Site at their closest points.

4.2.4 The surrounding land uses are as follows:

- **North:** The Site is bounded to the north by the current car park and access to TLOR. North of this is a drainage ditch and the training centre associated with TLOR;
- **South:** To the south of the Site beyond the Existing VPI CHP Plant Site is an area of vacant land and the railway spur to the refinery;
- **East:** Rosper Road, beyond which lie agricultural fields; and
- **West:** To the west of the Site is an area of land that benefits from Planning Permission granted by North Lincolnshire Council (reference PA/2018/918) to a sister company of the Applicant for a 49.9MW output capacity gas fired power station (the VPI Energy Park A development). Beyond that area is TLOR.

### 4.3 Site History

4.3.1 The OCGT Power Station Site and the Temporary Construction and Laydown Areas have previously been used as a car park and as a construction laydown area for TLOR. According to a review of historical mapping, it is likely that the Site was used for farming purposes until 1970s when the neighbouring refineries were developed.

A more detailed review of the history of the Site is included in Chapter 11: Ground Conditions and Hydrogeology (ES Volume I) (Application Document Ref: 6.2.11).

- 4.3.2 The surrounding industrial uses mean that these areas have not been used for agricultural purposes since approximately the same time as the development of the neighbouring industrial complexes.
- 4.3.3 The Existing VPI CHP Plant is one of the largest CHP plants in Europe, capable of generating 1,240 megawatts – about 2.5% of UK peak electricity demand and up to 930 tonnes of steam per hour, which is used by nearby oil refineries to turn crude oil into products such as gasoline. Construction of it was completed in 2004 and it was then expanded in 2009.

#### **4.4 The Order Land**

- 4.4.1 The Order Land comprises a number of areas adjacent to and within the Existing VPI CHP Plant Site, and the Existing Gas Pipeline Corridor:

- The OCGT Power Station Site consists of an undeveloped parcel of land of approximately 2.0 ha lying between the Existing VPI CHP Plant Site to the south, and Rosper Road to the east. Immediately to the north of it are a private car park and a number of single storey structures associated with access to TLOR. This land is owned and operated by Total, as is the TLOR. The Applicant has an option to call for a lease of the OCGT Power Station Site, to construct and operate the Proposed Development (the option agreement was entered into between VPI LLP and TLOR, but permits the lease to be entered into by the Applicant, rather than VPI LLP);
- The Access Site - construction and operational access to the OCGT Power Station Site is proposed to be from Rosper Road by way of an area to the north of the OCGT Power Station Site, coincident with the existing access and car park associated with the TLOR. The Applicant does not own or control the access points to these areas, but as above has an option to call for rights of access over these areas. Construction and operational access to the areas for Work Nos. 3, 4, 5 and 6 is proposed to be from Rosper Road by way of the existing entrance into the Existing VPI CHP Plant Site, and then using corridors within or adjacent to that site to access the various areas required for Work Nos. 3, 4, 5 and 6. The Applicant does not own or control these parts of the Access Site, but VPI LLP has a lease of those parts of them that are within the Existing VPI CHP Plant Site;
- Gas Connection Site – this is principally within the Existing VPI CHP Plant Site. There are two options under consideration for the corridor, both within the curtilage of the Existing VPI CHP Plant Site: one following the route of internal roadways to the east and south; and one passing between the existing buildings in a more direct north-south configuration. Both routes end at a new tie in at the Existing AGI Site within the Existing VPI CHP Plant Site. The Applicant does not own or control the land over which these works are proposed to take place, but VPI LLP has a lease of those parts of them that are within the Existing VPI CHP Plant Site;

- Electrical Connection Site and Utilities and Services Connections Site, to facilitate the export of electricity from the Proposed Development to the National Grid substation and other necessary utilities connections. These are also principally located in the Existing VPI CHP Plant Site, and part of the Utilities and Services Connections Site is also adjacent to the OCGT Power Station Site within Rosper Road. The Applicant does not own or control the land over which these works are to take place, but VPI LLP has a lease of those parts of them that are within the Existing VPI CHP Plant Site;
- Temporary Construction and Laydown Site comprising three areas: one to the immediate east of the Existing VPI CHP Plant Site and adjacent to Rosper Road; one to the north of the OCGT Power Station Site; and one to the north west of the OCGT Power Station Site. The Applicant has the benefit of an option agreement which will allow it to use the two areas adjacent to the Main OCGT Power Station Site. It does not own or control the area to the east of the Existing VPI CHP Plant Site, but VPI LLP has a lease of this area and uses it for laydown and related activities for the Existing VPI CHP Plant; and
- The Existing Gas Pipeline runs from the Existing AGI Site (within the Existing VPI CHP Plant) to an existing tie-in to the National Grid Gas plc ('NGG') Feeder 9 located to the west of South Killingholme. The Existing Gas Pipeline passes through a variety of areas and uses, including the Phillips 66 Limited refinery, under the A160 (twice), under the public railway (twice) and through a number of agricultural fields. The Applicant is seeking rights to use and maintain this pipeline and it is therefore included within the DCO Order land. No consent for works is sought in the DCO. The Applicant does not own or control the land in which the Existing Gas Pipeline sits; VPI LLP has a number of leases permitting it to install, maintain and use the Existing Gas Pipeline in connection with the Existing VPI CHP Plant.



## 5. COMPULSORY ACQUISITION POWERS

- 5.1.1 Section 120 of the PA 2008 provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.
- 5.1.2 Schedule 5 to the PA 2008 lists the matters ancillary to the development. These include:
- the acquisition of land, compulsorily or by agreement (paragraph 1);
  - the creation, suspension or extinguishment of, or interference with, interests in or rights over land, compulsorily or by agreement (paragraph 2);
  - the abrogation or modification of agreements relating to land (paragraph 3);
  - the payment of compensation (paragraph 36).
- 5.1.3 Section 122 of the PA 2008 provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State, in respect of the Application, is satisfied that:
- the land is required for the development to which the DCO relates;
  - the land is required to facilitate or is incidental to that development; or
  - the land is replacement land for commons, open spaces, etc.
- 5.1.4 The majority of the Order land is required for the development to which the DCO relates (the 'authorised development in the Order, and known as the Proposed Development). The remainder of the Order Land comprising the Existing Gas Pipeline Site is required to facilitate or is incidental to that development. No areas are included in the Order land as replacement land for commons, open space etc.
- 5.1.5 Further, it is also necessary for the Secretary of State to be satisfied, in relation to the Application, that there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the DCO. This is required by section 122(3) of the PA 2008.
- 5.1.6 Section 123 of the PA 2008 sets out conditions one of which must be satisfied for the Secretary of State to grant powers of compulsory acquisition over land – the relevant condition here is that the application includes a request for compulsory acquisition of the land.
- 5.1.7 The Draft DCO (Application Document Ref: 2.2) seeks powers to acquire land compulsorily and this Statement sets out the case for that, in particular considering these provisions.

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## 6. NEED FOR THE COMPULSORY ACQUISITION OF LAND AND RIGHTS

### 6.1 The Matters to which the Secretary of State must have Regard

6.1.1 As noted above, under Section 122 of the PA 2008, a DCO which includes compulsory acquisition powers may be granted only if the conditions in Sections 122(2) and 122(3) are met. The conditions to be met are that:

- the land is required for the development to which the DCO relates or is required to facilitate or is incidental to the development (Section 122(2), see paragraph 6.1.6 onwards below); and
- there is a compelling case in the public interest for inclusion of powers of compulsory acquisition in the DCO (Section 122(3)). The Secretary of State must be persuaded that the public benefits from the compulsory acquisition will outweigh the private loss suffered by those whose land is to be acquired (see Sections 7 and 8 below).

6.1.2 In respect of the Section 122(2) condition, the 'Guidance related to procedures for the compulsory acquisition of land' (at paragraph 11, DCLG, September 2013, 'the Guidance') states that applicants should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Guidance goes on to say that the Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.

6.1.3 In respect of the Section 122(3) condition, the Guidance (at paragraph 13) states that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. At paragraph 14, the Guidance states that in determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.

6.1.4 Further, paragraphs 8 to 10 of the Guidance also set out a number of general considerations that the applicant must demonstrate to the satisfaction of the Secretary of State when justifying an order authorising compulsory acquisition. These are as follows:

- that all reasonable alternatives to compulsory acquisition (including modifications to the Proposed Development) have been explored - see section 4 above in relation to aspects of the Order Land, and more generally paragraph 6.2 onwards;
- that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate - see the remainder of this section, and section 11 below;
- that VPIB has a clear idea of how it intends to use the land which it is proposed to acquire - Sections 3 and 4 above describe the Site and the Proposed

Development, and this section (paragraph 6.6 onwards) describes the nature of the interest sought and the purposes for which areas are to be acquired or used;

- that there is a reasonable prospect of the requisite funds for the acquisition becoming available - see the Funding Statement (Application Document Ref. 3.3); and
- that the purposes for which compulsory acquisition of land powers are included in the DCO are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected - see Section 11).

6.1.5 This Statement sets out the factors that VPIB considers demonstrate that the conditions in Section 122 of the PA 2008, and the considerations set out in the Guidance, are satisfied.

6.1.6 To ensure that the Proposed Development can be built, maintained and operated, and so that the Government's policy in relation to the timely provision of new generating capacity is met within a reasonable timescale, VPIB requires the acquisition of a number of property interests in third party ownership, and has therefore applied for the grant of powers to facilitate acquisition or creation of new rights and interests, and to extinguish rights over land.

6.1.7 There are three categories of land powers included in the Order (Application Document Ref. 2.1) – two of these are powers of compulsory acquisition of interests and the third is a power to occupy land temporarily. Each is introduced briefly below, followed by further information on the necessity of the powers sought and on what VPIB requires the land for. The section also provides information on the status of negotiations to acquire these interests by agreement.

## **6.2 All Interests in Land, including Freehold**

6.2.1 All interests (including freehold) - the land over which compulsory powers are sought generally (and therefore including all interests) is shown edged red and shaded pink on the Land Plans (Application Document Ref. 4.2). This is solely the area in which the OCGT Power Station Site (Work No. 1) is proposed. As well as the OCGT Power Station, this also includes areas for biodiversity mitigation and enhancement, required in order to comply with policy to include "appropriate mitigation measures as an integral part of the proposed development" and to take opportunities "to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals" (NPS EN-1, paragraph 5.3.18).

6.2.2 VPIB has the ability to call for a lease of the OCGT Power Station Site, through the option agreement entered into between VPI LLP and the freehold owner. However it is not certain that the option will be completed when required, and VPIB is therefore seeking compulsory acquisition powers in respect of the OCGT Power Station Site. These powers would only be relied on in the event that the freehold owner of the land could not or would not complete the lease under the option agreement.

6.2.3 VPIB has only included powers to compulsorily acquire the freehold interest in land where other powers (such as to acquire new rights or take temporary possession) would not be sufficient or appropriate to enable the construction, operation or maintenance of the Proposed Development. Article 18 of the Order (Application Document Ref: 2.1) is relied upon in respect of this land.

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### 6.3 New Rights over Land

- 6.3.1 New rights - the land over which compulsory powers are sought in respect of the creation of new rights is shown edged red and shaded blue on the Land Plans. In summary, these are the areas required for Access (Work No. 2); for the construction, operation and maintenance of the Gas Connection (Work No. 4), Electrical Connection (Work No. 5) and Utilities and Services Connections (Work No. 6), and for operation and maintenance of the Existing Gas Pipeline. The areas over which new rights are sought includes both the corridors within which the connections are to be constructed, and where necessary, routes along which VPIB can gain access to the relevant corridor from the public highway.
- 6.3.2 Whilst the Applicant can call for a lease (and related rights) which can facilitate construction, operation and maintenance on the OCGT Power Station Site, the option agreement does not include all land and rights required for gas, electric and utilities and services connections.
- 6.3.3 VPI LLP has a lease of the Existing VPI CHP Plant Site, but this does not permit it or VPIB to construct, maintain or use any of the apparatus required for the Proposed Development, and therefore VPIB requires new rights to be granted by the freehold owner of that land.
- 6.3.4 In addition, the land included in VPI LLP's option agreement with TLOR does not include two strips of land which are required for the Proposed Development and which are owned by TLOR. The first is a strip of land immediately to the east of the OCGT Power Station Site (plot 6, abutting Rosper Road), which is needed to deliver part of the Utilities and Services Connection (Work No. 6). The second is a strip of land immediately to the south of the OCGT Power Station Site (within Plot 5), separating it from the Existing VPI CHP Plant Site, and which is needed to deliver the Gas Connection (Work No. 4), Electrical Connection (Work No. 5) and the Utilities and Services Connection (Work No. 6).
- 6.3.5 Additionally, whilst VPI LLP has freehold and leasehold interests along the route of the Existing Gas Pipeline (under most of which VPI LLP can share use of and/or assign the leases to another party without landlord consent, such as VPIB), compulsory powers are required for a number of reasons. These include that there is (1) land in which VPI LLP has a lease but which cannot be assigned or the use of the pipeline shared without consent or a new agreement being entered into, including the land owned by Phillips 66 Limited and Network Rail Infrastructure Limited; (2) known interests along the Existing Gas Pipeline Site, such as in respect of third party cables or pipes; (3) areas of land of unknown ownership in which VPI LLP does not have an interest (such as under highways); and (4) some of the leasehold title plans for the Existing Gas Pipeline Site as registered at Her Majesty's Land Registry (HMLR), do not accord with the actual route of the pipeline as constructed, and it therefore appears (at HMLR) that VPI LLP's leasehold interest is in the 'wrong' place. VPI LLP is engaging with HMLR to seek to rectify the inaccurate HMLR leasehold title plans to ensure that the as built route is accurately reflected. The route of the Existing Gas Pipeline (as included in the Order Land / Application) follows the as-built pipeline - this ensures that, to the extent that VPIB has to rely on the compulsory acquisition powers to obtain rights over the pipeline, these will be in the land which includes the pipeline. The width of the Existing Gas Pipeline Site matches the area of land around the Existing Gas Pipeline which VPI LLP is, under its leases, permitted to occupy if required for maintenance and operation of the Existing Gas Pipeline.

- 6.3.6 The area in which new rights are sought for corridors for new apparatus (such as for the Gas Connection and Electrical Connection) are often constrained by existing plant and apparatus, particularly on the Existing VPI CHP Plant Site. There the corridors vary according to the existing land / structures, and have been routed and reduced where necessary to avoid impacting on existing structures wherever possible.
- 6.3.7 Article 21 of the Order is relied upon in respect of the acquisition of new rights. The purposes for which new rights can be required are set out in Schedule 6 to the Order.
- 6.3.8 VPIB has sought power to impose restrictive covenants, as well as acquiring existing and creating new rights in the Order land. Planning Inspectorate guidance (Advice Note 15, paragraphs 26.1-26.3) concerning the drafting of DCOs advises that it may be appropriate to include a power to impose restrictive covenants over part of the land which is subject to compulsory acquisition or use under the DCO. The guidance states that before deciding whether or not such a power is justified the Secretary of State will need to consider issues such as proportionality; the risk that use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose restrictive covenants; or whether there is for example a policy of establishing a continuous protection zone for the infrastructure network which could be secured more efficiently with the benefit of this power.
- 6.3.9 The guidance states that the power to impose restrictive covenants over land above a buried cable or pipe, or where a slope contains artificial reinforcement has been granted in DCOs, and cites article 20 of the M1 Junction 10A (Grade Separation) Order 2013 and article 22 of the Network Rail (Norton Bridge Area Improvements) Order 2014 as examples. The guidance advises that in order to enable the Secretary of State to consider whether the imposition of restrictive covenants is necessary for the purposes of implementing an NSIP and appropriate in human rights terms, applicants should be prepared to fully explain and justify the need for including such powers.
- 6.3.10 VPIB has had regard to this guidance in preparing its DCO. Article 21 includes power to impose restrictive covenants in relation to land over which new rights are acquired. MPL considers the imposition of such a power to be justified and proportionate in the circumstances of this case, in order to protect and preserve the integrity of the relevant parts of the authorised development and ensure that they cannot be interfered with. These restrictions are required to protect the apparatus from becoming exposed, damaged or built over; preventing operations which may obstruct, interrupt or interfere with apparatus and the exercise of new rights required; ensure that access for future maintenance can be facilitated; in the interests of safety of persons using or present on the subject land; and to ensure that land requirements are minimised so far as possible. Use of the land would be sterilised if the land above the pipes or cables had to be acquired. In the absence of such a power it is submitted that this is justifiable to protect the Proposed Development and its operation. Similar powers have been granted in the context of NSIP gas fired power stations including the Wrexham Gas Fired Generating Station Order 2017 (article 18) and the Millbrook Gas Fired Generating Station Order 2019 (article 21).

## **6.4 Temporary Use of Land**

- 6.4.1 Temporary use - the land in which powers of temporary use are sought is shown edged red and shaded yellow on the Land Plans. Articles 27 and 28 of the Order are

relied upon in respect of this land, and as such no compulsory acquisition is sought. Article 27 permits temporary use in two ways:

- Firstly, the land identified in Schedule 8 to the Order may only be temporarily possessed (i.e. VPIB cannot acquire the land nor new rights over it), and possession can only be taken for the purposes set out in that Schedule for the particular plot – this approach has been applied to the four Plots which are proposed to be used for Temporary Construction and Laydown (Work No. 3) and in relation to which VPIB does not require any interest in the land on a permanent basis; and
- Secondly, Article 27 permits VPIB to take temporary possession of any other part of the Order land where it has not yet exercised powers of compulsory acquisition - this will allow it (for instance) to initially take temporary possession of the whole width of the corridor for a new connection (such as the Gas Connection), and once it has carried out detailed surveys and installed the pipe, to acquire new rights (pursuant to the powers set out above) only in respect of the relevant strip within that corridor where a permanent easement is required. Such an approach has precedent amongst other DCOs including the Thorpe Marsh Gas Pipeline Order 2016 and the Eggborough Gas Fired Generating Station Order 2018 and the same approach is necessary to construct, operate and maintain the Proposed Development.

6.4.2 Article 28 allows for temporary possession to be taken of land within the Order Limits for the purposes of maintaining the Proposed Development, once constructed and operational, within a defined period.

6.4.3 In all cases the plots of land shown on the Land Plans are described in the Book of Reference (Application Document Ref. 3.1).

## **6.5 VPIB's Approach to Acquisition**

6.5.1 VPIB has been seeking to acquire the relevant freehold interests, new rights and temporary use of land by private treaty, in order to allow it construct, operate and maintain the Proposed Development. However, it has not yet been possible to acquire all of these by agreement. In addition, VPIB requires certain property rights to be suspended, overridden or extinguished within the Order Land so as to ensure there are no impediments to the construction, operation and maintenance of the Proposed Development.

6.5.2 In the absence of powers of compulsory acquisition, the Order Land may not be assembled, uncertainty will continue to prevail and VPIB considers that its objectives and Government policy objectives would not be achieved.

6.5.3 Whilst seeking compulsory acquisition powers, VPIB will continue to seek to acquire the land, the temporary use of land, the rights and other interests by agreement, as well as secure the removal of matters affecting the Order Land that may impede the Proposed Development, wherever possible. This approach of making the application for powers of compulsory acquisition in the Application for the DCO and, in parallel, conducting negotiations to acquire land by agreement, accords with paragraph 26 of the Guidance.

- 6.5.4 VPIB's justification for seeking compulsory purchase powers, in accordance with the provisions of the PA 2008, is to secure land, the temporary use of land, the rights and other interests required to enable VPIB to construct, operate and maintain the Proposed Development within a reasonable timeframe.
- 6.5.5 The inclusion of powers of compulsory acquisition in the Order is sought in order to ensure that this can be achieved. The relevant powers, and the land and interests sought together with the land required for temporary use, are no more than is required to facilitate the Proposed Development, its construction and future operation and maintenance.

## 6.6 Use of the Order Land and Status of Negotiations

- 6.6.1 The intended purpose for which land is subject to the proposed powers of compulsory acquisition and to possess land temporarily (as per Articles 18, 19, 21, 22, 24, 25, 27 and 28 of the Order) is summarised in Table 6.1 below.
- 6.6.2 This is described by reference to the Work Nos. set out in Schedule 1 to the Order and shown on the Works Plans (Application Document Ref.4.3), and by plot number as referenced in the Book of Reference and Land Plans (Application Document Refs. 3.1 and 4.2 respectively). Table 6.1 should be read together with those documents.
- 6.6.3 The table also sets out the position in terms of VPIB's negotiations to acquire interests in land or to take possession of land required for the Proposed Development by agreement. The position in relation to interests in land held by statutory undertakers and in relation to their apparatus within the Order land is set out at section 9 below.

**Table 6.1 - Land in respect of which powers of compulsory acquisition or temporary possession are sought**

Owner	Work Nos.	Plot Nos. and Interest Sought	Status of Negotiations
TLOR	1, 2, 3 and 6	5 - freehold acquisition (relating to Work No. 1); 2 - new rights (relating to Work No. 2); 1, 3 and 4 - temporary possession (relating to Work No. 3); and 6 and 7 - new rights (relating to Work No. 6).	<p>VPI LLP entered into an option agreement with TLOR dated 13 December 2017, and which permits a lease of the OCGT Power Station Site to be drawn down, and for other rights to be granted and other land to be used (such as the Construction and Laydown Areas at plots 1, 3 and 4). These leases and associated rights can be drawn down in other parties' names (such as VPIB), allowing it to carry out the Proposed Development.</p> <p>VPIB has been liaising extensively with TLOR since entering into the option agreement, including to allow VPIB access to the Site and the adjacent refinery for intrusive ground investigations, ecological and other</p>

Owner	Work Nos.	Plot Nos. and Interest Sought	Status of Negotiations
			<p>site surveys to be carried out as part of the preparation of the Application.</p> <p>As noted above, the option agreement does not include the necessary land or rights in respect of two strips, along the eastern and southern sides of the OCGT Power Station Site. VPIB is negotiating with TLOR to amend the option agreement to include these areas.</p>
Phillips 66 Limited	2, 3, 4, 5 and 6	<p>8, 9, 10, 14, 15, 20 to 23, 25 to 32, 34 and 35 - new rights (relating to Work No. 2);</p> <p>11, 13 and 19 - temporary possession (relating to Work No. 3);</p> <p>16 to 17, 20, 23, 28, 29 and 35 - new rights (relating to Work No. 4);</p> <p>17, 23, 24 and 30 - new rights (relating to Work No. 5); and</p> <p>6, 12, 14, 17, 18, 22, 23, 27, 28, 29 and 32 - new rights (relating to Work No.6).</p> <p>Existing Gas Pipeline - plot nos. 33, 36 to 40 and 42 to 58 - new rights.</p>	<p>P66 built the Existing VPI CHP Plant in 2003 and extended it in 2009, and has remained the freehold owner of the land it sits on (and that immediately surrounding it) up to the present time. P66 sold the Existing VPI CHP Plant to Vitol (the parent company of VPI LLP) in 2013, entering into a lease of the relevant land to allow VPI LLP to occupy and operate the Existing VPI CHP Plant. In addition the parties also entered into a lease in respect of that part of the Existing Gas Pipeline which runs through the P66 refinery and an energy services agreement ('ESA') under which VPI LLP provides electricity and steam to P66, for use at its refinery.</p> <p>Representatives of VPI (representing both VPIB and VPI LLP) have met and corresponded with P66 regularly since VPI was considering potential energy developments and since it decided to proceed with the Proposed Development. Some of the updates and discussions have taken place during quarterly meetings which take place between P66 and VPI, and others were at other meetings. The discussions often also covered VPI's adjacent gas engines project (also on TLOR land, to the west of the OCGT Power Station Site, known as the VPI Energy Park A), as this also requires connections</p>



Owner	Work Nos.	Plot Nos. and Interest Sought	Status of Negotiations
			<p>between its main project site and the Existing VPI CHP Plant.</p> <p>A summary of the main meetings and correspondence is as follows:</p> <ol style="list-style-type: none"> <li>1. 8/3/2018 – quarterly update meeting, principally discussing the ESA, and P66 were brought up to date with VPI’s potential power development aspirations.</li> <li>2. 17/7/2018 – meeting with P66 to provide an update on VPI’s proposed projects.</li> <li>3. 29/08/2019 – initial draft easement document was sent to P66 by email for consideration, covering the connections required between the development site on TLOR and the Existing VPI CHP Plant Site.</li> <li>4. 24/09/18 – provided updated draft easement and option for easement to P66 by email, for consideration.</li> <li>5. 6/10/2018 – P66 confirmed by email that its legal department had reviewed the easement and provided comments internally, and that a further internal discussion was planned for the week commencing 8 October.</li> <li>6. 8/10/18 – P66 requested plans showing the location of the proposed easement and confirmation that VPI would cover its professional fees of considering these matters, by email.</li> <li>7. 19/10/18 – VPI provided the drawings relevant to the requested easement, confirmed the likely approximate design height of the bridge for the connections, and confirmed that P66’s fee proposal was acceptable, by email.</li> <li>8. 13/12/18 – quarterly update meeting with P66.</li> <li>9. 14/3/19 – quarterly update meeting. It was agreed that the parties would meet in April 2019 to discuss the easements further.</li> </ol>

Owner	Work Nos.	Plot Nos. and Interest Sought	Status of Negotiations
			<p>P66 has not indicated any fundamental objections to or concerns regarding the Proposed Development in correspondence or meetings. VPIB will continue to engage with P66 to seek the necessary property rights by agreement.</p>
North Lincolnshire Council ('NLC')	2 and 6	8 and 9 - new rights (relating to Work No. 2)  7 - new rights (relating to Work No. 6).  Existing Gas Pipeline - plot nos. 71, 84, 85, 86, 96 and 97 - new rights.	<p>The Council is listed in the Book of Reference as the highway authority in respect of these plots, in which works are proposed or (along the Existing Gas Pipeline) where VPIB is seeking only powers of compulsory acquisition. VPIB has included powers to carry out works within highways as necessary within the Draft DCO, and where necessary will obtain the necessary land interests from adjoining owners (where they own the subsoil). The Applicant does not anticipate requiring any property interests from NLC.</p>
Elizabeth Angela Greetham	N/A	Existing Gas Pipeline Plot Nos. 59 to 83 new rights.	<p>As noted in section 6.3 above, VPI LLP has a lease in respect of the Existing Gas Pipeline, including in the relevant land owned by this freehold owner. The lease allows VPI LLP to share the use of the gas pipeline (including with VPIB) and/or to assign the benefit of the lease. VPIB does not anticipate needing to enter into any further legal agreements with this freehold owner in relation to the project.</p>
Church Commissioners for England	N/A	Existing Gas Pipeline Plot Nos. 59 to 64 new rights.	<p>The Church Commissioners own a mines and minerals interest in parts of the Existing Gas Pipeline Site. To the extent that VPIB will be utilising the benefit of the leases which VPI LLP has for the Existing Gas Pipeline in this land, VPIB does not anticipate needing to enter into any legal agreements with this minerals owner in relation to the project.</p>
Terence Tomlinson & Kathleen Tomlinson	N/A	Existing Gas Pipeline Plot Nos. 87 to 89 new rights.	<p>As noted in section 6.3 above, VPI LLP has a lease in respect of the Existing Gas Pipeline, including in the relevant land owned by this</p>

Owner	Work Nos.	Plot Nos. and Interest Sought	Status of Negotiations
			freehold owner. The lease allows VPI LLP to share the use of the gas pipeline (including with VPIB) and/or to assign the benefit of the lease. VPIB does not anticipate needing to enter into any further legal agreements with this freehold owner in relation to the project.
Anthony Roger Dinsdale & Vivienne Patricia Dinsdale	N/A	Existing Gas Pipeline Plot Nos. 90 to 92 new rights.	As noted in section 6.3 above, VPI LLP has a lease in respect of the Existing Gas Pipeline, including in the relevant land owned by this freehold owner. The lease allows VPI LLP to share the use of the gas pipeline (including with VPIB) and/or to assign the benefit of the lease. VPIB does not anticipate needing to enter into any further legal agreements with this freehold owner in relation to the project.
Able Humber Ports Limited	N/A	Existing Gas Pipeline Plot Nos. 93 to 95 new rights.	As noted in section 6.3 above, VPI LLP has a lease in respect of the Existing Gas Pipeline, including in the relevant land owned by this freehold owner. The lease allows VPI LLP to share the use of the gas pipeline (including with VPIB) and/or to assign the benefit of the lease. VPIB does not anticipate needing to enter into any further legal agreements with this freehold owner in relation to the project.
The Lincoln Diocesan Trust and Board of Finance Limited	N/A	Existing Gas Pipeline Plot Nos. 98 to 100, 102 and 103 new rights.	As noted in section 6.3 above, VPI LLP has a lease in respect of the Existing Gas Pipeline, including in the relevant land owned by this freehold owner. The lease allows VPI LLP to share the use of the gas pipeline (including with VPIB) and/or to assign the benefit of the lease. VPIB does not anticipate needing to enter into any further legal agreements with this freehold owner in relation to the project.
Trustees of S.J. Robinson	N/A	Existing Gas Pipeline Plot Nos. 108 to 110 new rights.	As noted in section 6.3 above, VPI LLP has a lease in respect of the Existing Gas Pipeline, including in the relevant land owned by this freehold owner. The lease allows VPI LLP to share the use of the gas

Owner	Work Nos.	Plot Nos. and Interest Sought	Status of Negotiations
			pipeline (including with VPIB) and/or to assign the benefit of the lease. VPIB does not anticipate needing to enter into any further legal agreements with this freehold owner in relation to the project.

- 6.6.4 The Book of Reference (Application Document Ref. 3.1) also lists those parties who have the benefit of rights and other similar interests in the Order land, who are principally the statutory undertakers and similar bodies considered further below (see section 9.3). The Draft Order (Application Document Ref. 2.1) provides that such interests are extinguished on VPIB acquiring the relevant part of the Order land (i.e. the freehold), or are suspended or extinguished as appropriate in other parts of the Order land (where new rights can be acquired or temporary possession taken). Matters relating to statutory undertakers' land and apparatus are set out below.
- 6.6.5 Additionally, through the same land referencing exercise and consideration of the potential effects of the Proposed Development (considered in detail in the Environmental Statement, Application Document Ref. Nos. 6.1 to 6.4), it has been established that no person is likely to have a relevant claim (being one pursuant to section 10 of the Compulsory Purchase Act 1965, under Part 1 of the Land Compensation Act 1973 or under section 152 of the PA2008). There are therefore no 'Category 3' people listed in the Book of Reference (Application Document Ref. 3.1).

## 6.7 Alternatives to Compulsory Acquisition

- 6.7.1 The Proposed Development requires the acquisition of land and the acquisition of / creation of rights to secure the land and rights needed to construct, operate and maintain the Proposed Development. Accordingly, there is no alternative but to seek to acquire land, the temporary use of land and the acquisition of / creation of rights to allow the Proposed Development to be constructed, operated and maintained.
- 6.7.2 It is considered that the 'do nothing' scenario is not appropriate given the established national need for new energy generation (see further below). The other key disadvantage of the 'do nothing' scenario would be the lack of additional investment in the local economy.
- 6.7.3 The Site has been selected by VPIB, as opposed to other potentially available sites for the following reasons, and in relation to which VPIB took account of relevant policy in National Policy Statement EN-2 (see further in section 8 below):
- The Site is currently vacant and is situated in an area immediately surrounded by major industry and power generation;
  - The Site has excellent electrical grid, gas, and transport links and is a brownfield site which is considered more attractive to redevelop for large scale power generation than a greenfield one;
  - The Applicant has the benefit of an option agreement in relation to the OCGT Power Station Site;

- The Site is remote from major conurbations, located in an established industrial area of low sensitivity; and
- The Site is adjacent to the Existing VPI CHP Plant, providing synergies with the existing workforce, services and utilities.

6.7.4 VPIB has not considered an alternative location for the new generating station. Any alternative location could require considerably more land and/or acquisition of new and temporary rights, than is required to construct and operate the Proposed Development. The proximity of the Proposed Development to the Existing VPI CHP Plant and proposed shared use of services connections and utilities, represents a very efficient approach and helps in reducing the need for compulsory acquisition powers.

## **6.8 Consideration of Alternative Gas Connection Routes**

6.8.1 The Gas Connection is proposed to be within an area of land to be used for the installation of the pipeline from the Existing Gas Pipeline (the supply to the Existing VPI CHP Plant) to Work No. 1 in order to fuel the Proposed Development.

6.8.2 During the pre-application consultation, VPIB consulted on two other potential routes for the Gas Connection, one around the northern and western sides of the Existing VPI CHP Plant Site and the second around the northern, eastern and southern sides. Either would have required the construction of a new AGI, outside the perimeter of the Existing VPI CHP Plant Site, on land owned by Phillips 66 Limited. Following the Stage 2 consultation and taking account of the consultation responses received (including in particular from parties with apparatus in the relevant area), VPIB decided to propose only Gas Connection routes within the curtilage of the Existing VPI CHP Plant. This reduced the areas of third party land required for the Proposed Development, as the Gas Connection Corridors are to a significant extent coincidental with other works comprised within the Proposed Development. See the Consultation Report (Application Document Ref. No. 5.1) for more details on the pre-application consultation and the account VPIB took of responses received.

6.8.3 The new pipeline would link into the Existing Gas Pipeline via the Existing AGI located within the curtilage of the Existing VPI CHP Plant Site. There are two pipeline routes under consideration by VPIB, both of which would be within the curtilage of the Existing VPI CHP Plant Site and be approximately 800m in length, and both of which are allowed for within the Application. The appropriate route will be selected by the Applicant prior to construction of the Proposed Development, and the selection of the route is to be approved by the relevant planning authority pursuant to requirement 5 (in Schedule 2 to the Draft DCO, Application Document Ref. No. 2.1).

6.8.4 In relation to the Existing Gas Pipeline, there was no need to consider alternative routes – the pipeline is already in place, and VPIB is seeking powers of compulsory acquisition solely to ensure it can operate and maintain the Existing Gas Pipeline, for the benefit of the Proposed Development.

## **6.9 Conclusion on Alternatives**

6.9.1 It is clear that VPIB has undertaken a clear process to derive an appropriate site for, and form and route of the relevant elements of the Proposed Development, and has considered alternatives in doing so. None of the alternatives would provide the

compelling benefits that the Proposed Development will, or would involve additional impacts or disadvantages in terms of land take, environmental, technical or other considerations.

- 6.9.2 VPIB has sought to acquire the necessary land and rights by agreement but has not been able to do so. Whilst it will continue to seek to acquire the land and rights by voluntary agreement, it requires the powers of compulsory acquisition sought in order to provide certainty that it will have all the land required to construct and operate the Proposed Development, in order to realise its very significant public benefits.

### **6.10 Availability of Funds for Compensation**

- 6.10.1 The Funding Statement (Application Document Ref. 3.3) confirms that VPIB has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and the payment of compensation, as applicable. It is not aware of any interests within the Order land in respect of which a person may be able to make a blight claim, but in the event this did occur VPIB has sufficient funds to meet any compensation due.
- 6.10.2 VPIB therefore considers that the Secretary of State can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.
- 6.10.3 In addition, the Applicant has proposed that the Draft DCO includes an article requiring VPIB to provide financial security for compensation that may be payable pursuant to the DCO, prior to exercising any powers of compulsory acquisition (see the Draft DCO, Application Document Ref. No. 2.1).

## 7. JUSTIFICATION FOR THE USE OF THE POWERS OF COMPULSORY ACQUISITION

### 7.1 Compelling Case

7.1.1 A Planning Statement (Application Document Ref. 5.3) accompanies the Application. This explains how the Proposed Development:

- meets an urgent need for new energy infrastructure;
- is a form of economic development that is suitable in its local context;
- minimises or mitigates adverse impacts to an acceptable degree;
- is compliant with NPS EN-1, NPS EN-2, NPS EN-4 and NPS EN-5 and in accordance with other decision-making factors specified in Section 104 of the PA 2008.

7.1.2 The Planning Statement provides an extensive review of these matters. Summarised below is the compelling need case as set out within the Planning Statement.

### 7.2 The Need for New Electricity Generating Capacity

7.2.1 The need that exists for new electricity generating infrastructure, such as that proposed, is confirmed in the NPSs for energy infrastructure that were designated by the SoS for BEIS (then the Department of Energy and Climate Change) in July 2011. These NPSs form the primary basis for decisions by the SoS on nationally significant energy infrastructure that falls to be considered under the PA 2008.

7.2.2 The NPSs of most direct relevance to the Proposed Development include EN-1, EN-2, EN-4 and EN-5. Of these, EN-1 sets out the 'need' that exists for new energy infrastructure.

7.2.3 Part 2 of EN-1 'Government policy on energy and energy infrastructure development' outlines the policy context for the development of nationally significant energy infrastructure. Paragraph 2.1.2 highlights that energy is vital to economic prosperity and social well-being and, as such, it is important to ensure that the UK has secure and affordable energy. Furthermore, producing the energy the UK requires and getting it to where it is needed necessitates a significant amount of infrastructure, both large and small scale.

7.2.4 Section 2.2 'The road to 2050' confirms the Government's commitment to meet the UK's legally binding target to cut greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels (paragraph 2.2.1). This will require major changes in how energy is generated and used. It identifies a number of key themes of Government energy policy. These include the transition to a low carbon economy; the power sector and carbon emissions; electricity market reform; and the security of energy supplies.

7.2.5 The section on 'electricity market reform' (paragraphs 2.2.16 - 2.2.19) highlights how around a quarter of the UK's generating capacity is due to close by the end of the decade and that while for the time being electricity margins are healthy there is still the need for investment of over £100 billion in the electricity sector alone by the end

of the decade. It goes on to state that the Government is looking at a variety of reforms in order to promote investment so as to replace aging infrastructure.

- 7.2.6 Paragraphs 2.2.20 - 2.2.26 of EN-1 deal with the 'security of energy supplies'. Paragraph 2.2.20 states that it is critical that the UK continues to have secure and reliable supplies of electricity as it makes the transition to a low carbon economy. Furthermore, that to manage the risks to achieving security of supply the UK needs:
- Sufficient electricity capacity to meet demand at all times, including a 'safety margin of spare capacity' to accommodate unforeseen fluctuations in supply or demand;
  - Reliable associated supply chains (for example, fuel for power stations) to meet demand as it rises; and
  - A diverse mix of technologies and fuels (and fuel supply routes), so that it does not rely on any one technology or fuel.
- 7.2.7 Part 3 of EN-1 'The need for new nationally significant energy infrastructure' defines and sets out the 'need' that exists for nationally significant energy infrastructure. Paragraph 3.1.1 states that the UK needs all the types of energy infrastructure covered by EN-1 (this covers a range of electricity generating capacity, including gas) in order to achieve energy security. Paragraph 3.1.2 goes on to state that it is for industry to propose new energy infrastructure and that the Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.
- 7.2.8 Notably, paragraph 3.1.3 stresses that the SoS should assess applications for development consent for the types of infrastructure covered by the energy NPSs "...on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need..." is as described for each of them. Paragraph 3.1.4 continues that the SoS should give substantial weight to the contribution that all proposed developments would make toward satisfying this need when considering applications under the PA 2008.
- 7.2.9 As such, the need that exists for new energy infrastructure is not open to debate or interpretation and is clearly confirmed by EN-1.
- 7.2.10 Section 3.3 of Part 3 of EN-1 sets out why the Government believes that there is an urgent need for new electricity infrastructure, including:
- **Meeting energy security and carbon reduction objectives** - the need to ensure there is sufficient electricity generating capacity to meet maximum peak demand, with a safety margin of spare capacity to accommodate unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events; and a diverse mix of power generation to reduce reliance on any one type of generation or source of fuel or power.
  - **The need to replace closing electricity generating capacity** - at least 22 GW of existing electricity generating capacity will need to be replaced in the coming years, particularly by the end of the decade, as a result of tightening environmental regulation and ageing power stations (in particular the closure of



coal-fired stations); in addition to this about 10 GW of nuclear generating capacity is expected to close over the next 20 years.

- **The need for more electricity capacity to support the increased supply from renewables** - decarbonisation of electricity generation is reliant on a dramatic increase in the amount of renewable energy; however, some renewable sources (such as wind, solar and tidal) are intermittent and cannot be adjusted to meet demand. As a result, the more renewable generating capacity the UK has, the more generation capacity it will require overall to provide back up at times when the availability of renewable sources is low - with regard to this it is important to note that EN-1 recognises that there will still be a role for fossil fuel generation to provide a cost-effective means of 'back up' electricity generation at short notice to support renewable technologies.
- **Future increases in electricity demand** - even with major improvements in overall energy efficiency, it is expected that demand for electricity will increase, as significant sectors of energy demand (such as industry, heating and transport) switch from being powered by fossil fuels to using electricity. As a result of this, total electricity consumption could double by 2050 and, depending upon the choice of how electricity is supplied, total capacity may need to more than double to be sufficiently robust to all weather conditions.

7.2.11 Paragraphs 3.3.15 - 3.3.24 of EN-1 deal with the urgency of the need for new electricity generating capacity. Paragraph 3.3.15 states that in order to secure energy supplies that enable the UK to meet its climate change obligations to 2050, there is an urgent need for new energy infrastructure to be brought forward as soon as possible, and certainly in the next 10-15 years.

7.2.12 Paragraph 3.3.23 confirms that the Government believes (based on predictions) that it is prudent, in order to minimise the risk to energy security and resilience, to plan for a minimum need of 59 GW of new electricity generating capacity by 2025. The Government would like to see a significant proportion of the balance come from low carbon generation (paragraph 3.3.22).

### 7.3 The Role of Fossil Fuel Generating Stations

7.3.1 Section 3.3 (paragraph 3.3.4) of EN-1 highlights the benefits of having a diverse mix of all types of power generation:

*"It means we are not dependent on any one type of generation or one source of fuel of power and so helps to ensure security of supply... the different types of electricity generation have different characteristics which can complement each other...."*

7.3.2 With regard to fossil fuel generating station, paragraph 3.3.4 states that this:

*"...can be brought on line quickly when there is a high demand and shut down when demand is low, thus complementing generation from nuclear and the intermittent generation for renewables..."*

7.3.3 EN-1 therefore recognises the continuing role of fossil fuel generation in terms of complementing other types of generation, notably renewables, providing resilience in the UK's energy system and ensuring the security of electricity supplies.

- 7.3.4 Section 3.6 of EN-1 deals specifically with the role of fossil fuel electricity generation. Paragraph 3.6.1 states:

*"Fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy, and Government policy is that they must be constructed, and operate, in line with increasingly demanding climate change goals."*

- 7.3.5 Paragraph 3.6.2 recognises that gas will continue to play an important role in the electricity sector, providing vital flexibility to support the increasing amount of low carbon generation and to maintain security of supply. It goes on to highlight that the UK gas market has diversified its sources of supply of gas in recent years, so that at it becomes more import dependent, companies supplying the market are not reliant on one source of supply. This protects the UK market from disruptions to supply.

- 7.3.6 Paragraph 3.6.3 confirms that some of the new conventional generating capacity needed in the UK is likely to come from new fossil fuel generating capacity in order to maintain security of supply and to provide flexible back-up for intermittent renewable energy, particularly from wind. It does however note that fossil fuel generation produces atmospheric emission of carbon dioxide but that the amount produced, depends, amongst other things, on the type of fuel and the design of and age of the power station. It goes on to state that at present coal typically produces about twice as much carbon dioxide as gas per unit of electricity generated, but that new technology (carbon capture and storage) offers the prospect of reducing the carbon dioxide emissions of both fuels at a level where, whilst retaining their existing advantages, they can also be regarded as low carbon energy sources.

- 7.3.7 The continuing need for fossil fuel generation is confirmed at paragraph 3.3.8 of EN-1, as follows:

*"... a number of fossil fuel generating stations will have to close by the end of 2015. Although this capacity may be replaced by new nuclear and renewable generating capacity in due course, it is clear that there must be some fossil fuel generating capacity to provide back-up for when generation from intermittent renewable generating capacity is low and to help with the transition to low carbon electricity generation."*

## 7.4 Summary

- 7.4.1 EN-1 clearly confirms the need that exists for all types of nationally significant energy infrastructure, including new fossil fuel generating stations; and makes clear that the SoS should assess applications on the basis that this need, and its scale and urgency, has been proven. Furthermore, EN-1 confirms that the SoS should give substantial weight to the contribution that all developments would make toward satisfying this need. As such, the need that exists for new electricity generating infrastructure, such as that proposed, is not open to debate or interpretation.

- 7.4.2 EN-1 also recognises that even with the move to a low carbon economy, the UK will continue to rely on fossil fuels as part of its energy mix for decades to come. In this respect, fossil fuel generating stations have a vital role to play in adding to the security, diversity and resilience of the UK electricity supplies. Not least, they ensure

that the country is not overly reliant on any one type of generation and can be operated flexibly, providing back-up for when generation from intermittent renewable generating capacity is low, supporting the UK's transition to low carbon electricity generation.

- 7.4.3 Gas is more efficient and results in lower carbon dioxide emissions than other fossil fuels such as coal and oil. Furthermore, the OCGT Power Station would deploy highly efficient gas turbine technology capable of rapid start-up times and flexible operation to support the intermittency of renewables generation and in combination with renewables deployment would contribute to the progressive reduction in UK carbon dioxide emissions from the power sector.
- 7.4.4 The Proposed Development will be capable of generating up to 299MW and being a modern OCGT power station, means that emissions of sulphur dioxide (SO<sub>2</sub>) and particulate matter (PM) from the OCGT will be negligible.
- 7.4.5 For the above reasons VPIB considers that:
- the Proposed Development will make a major contribution toward addressing the need that exists for new electricity generating capacity in the UK and that it will add to the security, diversity and resilience of UK electricity supplies and support to transition to low carbon electricity generation; and
  - there is a clear and compelling national need for the development of a new OCGT generating station and has selected the Site on which to do so for technical, environmental and commercial reasons.

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## 8. POLICY SUPPORT

### 8.1 National Policy Statements

8.1.1 The 2008 Act grants the Secretary of State power to designate statements as National Policy Statements ('NPSs') setting out policy relevant to the examination and determination of different types of NSIPs. Notably, where a NPS has effect in relation to a type of NSIP development (such as energy generation), section 104 of the 2008 Act requires the Secretary of State to determine applications for NSIPs in accordance with the relevant NPSs, unless this would:

- lead to the UK being in breach of its international obligations;
- be in breach of any statutory duty that applies to the Secretary of State;
- be unlawful;
- the adverse impacts of the development outweigh its benefits; or
- be contrary to any regulations that may be made prescribing other relevant conditions.

8.1.2 NPSs which have effect are therefore the primary (but not only) matter against which applications for NSIPs are judged. In taking decisions on applications for NSIPs, section 104 of the 2008 Act states that the SoS must also (in addition to the NPSs) have regard to appropriate marine policy documents, local impact reports (these are submitted by local authorities during the examination of DCO applications) and any other matters that the SoS considers to be both 'important and relevant' to their decision. Such matters can include local development plan documents.

8.1.3 A number of NPSs relating to nationally significant energy infrastructure were designated in July 2016. Those NPSs which are relevant to the Proposed Development are as follows:

- Overarching National Policy Statement for Energy (EN-1) (Ref 5-1);
- National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2) (Ref 5-2);
- National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) (Ref 5-3); and
- National Policy Statement for Electricity Networks Infrastructure (EN-5) (Ref 5-4).

8.1.4 NPS EN-1, in conjunction with related technology specific NPSs, provides the primary basis for decisions by the SoS in relation to nationally significant energy infrastructure.

8.1.5 Part 2 of EN-1 sets out 'Government policy on energy and energy infrastructure development'. It confirms the following:

- The Government's commitment to meet its legally binding target to cut greenhouse gas emissions by at least 80% by 2050 compared to 1990 levels;

- The need to effect a transition to a low carbon economy so as to reduce greenhouse gas emissions; and
  - The importance of maintaining secure and reliable energy supplies as older fossil fuel generating plant closes as a result of the European Union Emissions Trading System ('EU ETS') and the UK moves toward a low carbon economy.
- 8.1.6 Part 3 of EN-1 defines and sets out the need that exists for nationally significant energy infrastructure. Paragraph 3.1.1 states that the UK needs all the types of energy infrastructure covered by the NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions. Paragraph 3.1.2 goes on to state that it is for industry to propose new energy infrastructure and that the Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.
- 8.1.7 Notably, paragraph 3.1.3 of EN-1 stresses that the SoS should assess applications for development consent for the types of infrastructure covered by the energy NPSs; "...on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need..." is as described for each of them. Paragraph 3.1.4 continues that the SoS should give substantial weight to the contribution that all projects would make toward satisfying this need when considering applications under the 2008 Act. As such, EN-1 is clear that the need that exists for new energy infrastructure is not open to debate or interpretation.
- 8.1.8 The urgency of the need for new electricity generating capacity is underlined by projections within EN-1 that indicate up to 22 gigawatts ('GW') of existing capacity will close over the period to 2020 in part due to the Industrial Emissions Direction but also as a result of some power station reaching the end of their operational lives (paragraph 3.3.7). In response to this, EN-1 identifies a minimum need for 59 GW of new generating capacity over the period to 2025 (paragraph 3.3.23).
- 8.1.9 Part 4 of EN-1 sets out a number of 'assessment principles' that must be taken into account by applicants, PINS and the Secretary of State in (respectively) preparing, examining and determining applications for nationally significant energy infrastructure. General points include (paragraph 4.1.2), given the level and urgency of need for the infrastructure covered by the energy NPSs, the requirement for the Secretary of State to start with a presumption in favour of granting consent for applications for energy NSIPs. This presumption applies unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused or any of the considerations referred to in Section 104 of the 2008 Act (noted above) apply.
- 8.1.10 Paragraph 4.1.3 goes on to state that in considering any application, and in particular, when weighing its adverse impacts against its benefits, the Secretary of State should take into account:
- its potential benefits, including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
  - its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.

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- 8.1.11 Paragraph 4.1.4 continues by stating that within this context the Secretary of State should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels.
- 8.1.12 Other assessment principles include the matters considered in the ES; the Conservation of Habitats and Species Regulations 2017; the consideration of alternatives; criteria for 'good design'; consideration of the feasibility of combined heat and power; consideration of the requirements of the carbon capture readiness regulation; grid connection; climate change adaptation; pollution control and environmental regulatory regimes; safety; hazardous substances; health; common law and statutory nuisance and security, amongst others.
- 8.1.13 Part 5 of EN-1 lists a number of 'generic impacts' that relate to most types of energy infrastructure, which both applicants and the Secretary of State should take into account when preparing and considering applications. These include land use; socio-economics; air quality and emissions; noise and vibration; dust, odour, artificial light, steam and smoke; traffic and transport; civil and military aviation; biodiversity and geological conservation; historic environment; landscape and visual; water quality and resources; flood risk and waste, amongst others. Paragraph 5.1.2 stresses that the list of impacts is not exhaustive and that applicants should identify the impacts of their projects in the ES in terms of both those covered by the NPSs and others that may be relevant. In relation to each of the generic impacts listed within Part 5 of EN-1, guidance is provided on how the applicant should assess these within their application and also the considerations that the Secretary of State should take into account in decision-making.
- 8.1.14 In addition to a number of the assessment principles and generic impacts covered by EN-1, NPS EN-2, EN-4 and EN-5 set out the factors (e.g. those influencing site selection) and 'assessment and technology specific' considerations to be taken into account in the preparation and assessment of applications for fossil fuel generating stations, gas pipelines and electricity network infrastructure, including relevant environmental matters. These are considered briefly below.

***The NPS for Fossil Fuel Electricity Generating Infrastructure***

- 8.1.15 Taken together with EN-1, EN-2 provides the primary basis for decisions on applications for fossil fuels electricity generating stations, including gas-fired power stations (such as the Proposed Power Development). The document provides additional policy guidance against which to assess such proposals.
- 8.1.16 Section 2.2 outlines the factors influencing site selection for fossil fuel power stations. These include land use and size of site; transport infrastructure for the delivery and removal or construction materials, fuel, waste and equipment; and water resources, for example, some power station have very high water demands for cooling; and grid connection. However, in outlining such factors, paragraph 2.2.1 makes clear that "...it is for energy companies to decide what application to bring forward and the Government does not seek to direct applicants to particular sites for fossil fuel generating stations."
- 8.1.17 Technology specific considerations to be taken into account in the assessment of fossil fuel power stations (in addition to the assessment principles and generic impact set out in EN-1) include air emissions; landscape and visual; noise and vibration;

release of dust (in respect of coal-fired stations); residue management (again in respect of coal stations); and water quality and resources.

#### ***The NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)***

- 8.1.18 Section 2.19 of EN-4 provides guidance on the assessment of applications for new gas pipelines. The Proposed Development includes a pipeline connection (the 'New Gas Pipeline') between Work No. 1 and connecting to the Existing AGI on the Existing VPI CHP Plant Site. The New Gas Pipeline does not represent a NSIP in its own right but it is included within the development for which development consent is sought as 'associated development' to the Proposed Development.
- 8.1.19 Key technology specific considerations for gas pipelines include proximity to sensitive land uses (e.g. residential development and schools) when planning routes; pipeline safety; noise and vibration; biodiversity; landscape and visual; water quality and resources; and soils and geology. These were matters which VPIB took into account, where relevant, in considering site selection for the Proposed Development and the route of the New Gas Pipeline Route.

#### ***The NPS for Electricity Networks Infrastructure (EN-5)***

- 8.1.20 EN-5 outlines principles on which the Secretary of State will apply to applications for new electricity transmission lines as well as associated infrastructure, such as substations. It should be noted that the project will involve small scale electricity grid connection works to the existing National Grid substation which is located within the Existing VPI CHP Plant Site.
- 8.1.21 Technology specific considerations to be taken into account for such works include biodiversity and geological conservation, landscape and visual, noise and vibration and the impacts of electric and magnetic fields. These were matters which VPIB took into account in considering the route of the Electrical Connection.

## **8.2 Other Matters that may be 'Important and Relevant'**

- 8.2.1 As noted above, in making decisions on applications for NSIPs, section 104 of the 2008 Act states that the SoS must also (in addition to the NPSs) have regard to any other matters that they consider to be both 'important and relevant' to their decision. Paragraph 4.1.5 of EN-1 provides some clarification on such matters, stating that these may include development plan documents or other documents in the local development framework.
- 8.2.2 EN-1 is clear (reflecting the terms of the 2008 Act), however, that in the event of any conflict between a NPS and development plan documents, the NPS prevails for the purposes of SoS decision-making given the national significance of the infrastructure concerned.

#### ***National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)***

- 8.2.3 The National Planning Policy Framework ('NPPF') was adopted in March 2012 and last updated in July 2018 (Ref 5-5). The policies contained within the NPPF are expanded upon and supported by the 'Planning Practice Guidance', which was originally published in March 2014 and has been updated incrementally since.

- 8.2.4 The NPPF sets out the Government's planning policies for England and how these are to be applied. It is a material consideration in planning decisions. Paragraph 5 of the NPPF makes it clear that the document does not contain specific policies for NSIPs and that applications in relation to NSIPs are to be determined in accordance with the decision making framework set out in the Planning Act 2008 and relevant NPSs, as well as any other matters that are considered both important and relevant. However, paragraph 5 clarifies that matters considered both important and relevant to NSIPs may include the NPPF.
- 8.2.5 Paragraph 7 of the NPPF is clear that the purpose of the planning system is to contribute to the achievement of sustainable development, which it summarises as meeting the needs of the present without compromising the ability of future generations to meet their own needs. Paragraph 8 goes on to identify three dimensions of sustainable development: economic, social and environmental. It states that their dimensions give rise to the need for the planning system to perform a number of key roles as follows:
- “an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
  - a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
  - an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”
- 8.2.6 Paragraph 8 emphasises that these roles should not be undertaken in isolation, because they are interdependent. For example, economic growth can secure higher social and environmental standards while well designed buildings and places can improve the lives of people and communities.
- 8.2.7 Central to the NPPF is ‘a presumption in favour of sustainable development’. This is highlighted at Paragraph 11. For decision-making, this means approving applications that accord with the development plan without delay.
- 8.2.8 NPPF policies of particular relevance include promoting sustainable transport; requiring good design; promoting healthy communities; conserving and enhancing the natural and historic environment; and meeting the challenge of climate change and mitigating its effects.

### ***The Statutory Development Plan***



8.2.9 The Order Land is located primarily within the administrative boundary of North Lincolnshire Council (NLC) with a small section of the Existing Gas Pipeline Site being within the administrative boundary of North East Lincolnshire Council (NELC).

***North Lincolnshire Council***

8.2.10 The statutory development plan for NLC currently comprises the following documents:

- North Lincolnshire Core Strategy;
- North Lincolnshire Minerals and Waste Development Plan Document: Humber Area Local Aggregate Assessment (Draft);
- North Lincolnshire Housing and Employment Land Allocations Development Plan Document; and
- North Lincolnshire Local Plan (Saved Policies).

8.2.11 The following NLC policies are considered relevant to the Proposed Development:

- Core Strategy
  - CS1 – Spatial Strategy for North Lincolnshire;
  - CS2 – Delivering More Sustainable Development;
  - CS12 – South Humber Bank Strategic Employment Site;
  - CS16 – North Lincolnshire’s Landscape, Greenscape and Waterscape;
  - CS17 – Biodiversity;
  - CS18 – Sustainable Resource Use and Climate Change;
  - CS19 – Flood Risk;
  - CS20 – Sustainable Waste Management;
  - CS21 – Minerals;
  - CS25 – Promoting Sustainable Transport;
  - CS26 – Strategic Transport Infrastructure Proposals.
- Local plan:
  - IN1 – Industrial Development Location and Uses;
  - IN3 – Industrial and Commercial Development;
  - LC1 – Special Protection Areas, Special Areas of Conservation and RAMSAR Sites;
  - LC5 – Species Protection;
  - LC7 – Landscape Protection;
  - LC12 – Protection of Trees, Woodland and Hedgerows;
  - LC20 – South Humber Bank – Landscape Initiative;
  - HE9 – Archaeological Excavation;

- M23 – Oil and Gas Production
- DS1 – General Requirements;
- DS7 – Contaminated Land;
- DW11 – Polluting Activities;
- DS13 – Groundwater Protection and Land Drainage;
- DS15 – Water Resources;
- DS16 – Flood Risk;
- T1 – Location of Development;
- T2 – Access to Development; and
- T18 – Traffic Management.

8.2.12 The Site is identified as falling within Employment Land Allocation SHBE-1 South Humber Bank, (Housing and Employment Land Allocations Development Plan).

8.2.13 South Humber Bank needs:

*“900 hectares (gross area) of B1 (Offices/Light Industrial), B2 (General Industry) and B8 (Storage and Distribution) port related activities to take special advantage of its location within an existing port environment, flat topography and being adjacent to a deep water channel of the Humber Estuary.”*

*“The expected port related activities on the site will in the main be heavy industrial users meaning pollution and waste control measures will be crucial to the success of the site in sustainability terms.”*

8.2.14 There are no relevant policies contained within the Humber Area Local Aggregate Assessment document.

#### **North East Lincolnshire Council**

8.2.15 Within NELC's area, the recently adopted North East Lincolnshire Local Plan 2013 to 2032 (Adopted March 2018) is considered to be applicable. The following policies from the Local Plan are considered relevant to the Proposed Development (which is wholly within NLC's area, but part of the Existing Gas Pipeline is within NELC's area):

- SO1 – Population;
- SO2 – Climate Change;
- SO3 – Economy;
- SO5 – Social and health inequality;
- SO6 – Built, historic and natural environment;
- SO7 – Transport;
- SO10 – Minerals and Waste;
- Policy 6 – Infrastructure;

- Policy 32 – Energy and low carbon living;
- Policy 33 – Flood risk;
- Policy 34 – Water Management;
- Policy 37 – Safeguarding and Transport Infrastructure;
- Policy 39 – Conserving and enhancing the historic environment;
- Policy 41 – Biodiversity and Geodiversity; and
- Policy 42 – Landscape.

8.2.16 VPIB has had regard to these policies.

### **8.3 Summary**

8.3.1 The NPSs form the primary basis for decisions by the Secretary of State on applications for NSIPs.

8.3.2 In addition to setting out the strong need for new energy infrastructure, they provide detailed guidance on the matters to take into account when both preparing and assessing applications for NSIPs. They (and the PA2008) also confirm that the Secretary of State must have regard to any other matters that they consider are both 'important and relevant', which can include the NPPF and local development plan policy. Both the NPS and NPPF are clear, however, that in the event of any conflict between a NPS and another document, the NPS prevails.

8.3.3 The Application includes a detailed assessment of the Proposed Development, taking account of the findings of the EIA as reported within the ES, against the relevant NPSs and other relevant policy documents such as the NPPF and local development plan. Further information on this is set out in Chapter 5 of the ES (Volume I, Application Document Ref. 6.2), and the Planning Statement (Application Document Ref: 5.3) and policy specific to each topic assessed in the ES is considered in the relevant technical chapters (chapters 6-16 Volume I, Application Document Ref: 6.2).



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## 9. SPECIAL CONSIDERATIONS

### 9.1 Crown Land

9.1.1 No Crown Land is included in or affected by the Order Land.

### 9.2 Special Category Land – Open Space etc.

9.2.1 No open space, common land, fuel or field garden allotment is included in or affected by the Order Land.

### 9.3 Statutory Undertakers' Land and Apparatus

9.3.1 VPIB has identified the following land or apparatus belonging to statutory undertakers or other operators of infrastructure within the Order land. Set out immediately below are those who have land or apparatus within the Order limits, and which are therefore affected by VPIB's proposed works. They may also have land or apparatus within the Existing Gas Pipeline, and this is noted where relevant:

- National Grid Electricity Transmission (NGET) plc – the Electrical Connection for the Proposed Development will connect into NGET's substation within the Existing VPI CHP Plant, although the Order limits and Order land do not include the sub-station itself. NGET accesses its sub-station through various plots within the Existing VPI CHP Plant Site. Within the Existing Gas Pipeline Site, NGET has apparatus and/or benefits from restrictions on title affecting land crossed by the pipeline;
- P66 – within the Site, P66 owns pipelines which run in between the Existing VPI CHP Plant and the OCGT Power Station Site. It also has other ownership within the Site (such as the freehold of the Existing VPI CHP Plant Site) but this is not P66 operational land and is therefore not relevant for these purposes. P66 is also the freehold owner of a significant part of the Existing Gas Pipeline Site (which runs through P66's existing refinery), and also owns over-ground pipes, cables and other apparatus within the Existing Gas Pipeline Site and south of the Humber Refinery;
- TLOR – is the freehold owner of the OCGT Power Station Site (not operational land, currently unused), two of the Temporary Construction and Laydown Areas (one unused, one is used for parking associated with the refinery) and of the proposed access route to the OCGT Power Station Site;
- Northern Powergrid (Yorkshire) Plc – within the Site, Northern Powergrid owns underground cables, services and associated apparatus. Within the Existing Gas Pipeline Site it owns underground and overhead electrical cables and associated apparatus;
- CLH Pipeline System (CLH-PS) Limited – CLH owns a high pressure pipeline which is located along the southern edge of the OCGT Power Station Site and also runs along Rosper Road. CLH also owns an underground high pressure pipeline which crosses the Existing Gas Pipeline Site;
- Anglian Water Services Limited – within the Site, Anglian Water owns underground pipelines and associated apparatus, including potable and

decommissioned water pipelines. Within the Existing Gas Pipeline Site it owns potable water pipelines, underground pipelines and associated apparatus;

- Centrica Storage Limited - Centrica owns an underground gas pipeline which is located within Rosper Road and immediately adjacent to the OCGT Power Station Site; and
- BT plc – owns underground cables and associated apparatus at various locations both within the Site and the Existing Gas Pipeline Site.

9.3.2 The following are the statutory undertakers or other operators of infrastructure which VPIB has identified whose land or apparatus is solely within the Existing Gas Pipeline, and which therefore is not affected by the works proposed in the Draft DCO:

- Highways England Company Limited – the route of the A160 is crossed twice by the Existing Gas Pipeline;
- Network Rail Infrastructure Limited – the Existing Gas Pipeline crosses operational railway lines twice and grassland adjacent to the railway line;
- National Grid Gas plc ('NGG') – within the Existing Gas Pipeline Site, NGG has apparatus and/or benefits from restrictions on title affecting land crossed by the Existing Gas Pipeline;
- Cadent Gas Limited – Cadent has underground intermediate and high pressure pipelines located within the Existing Gas Pipeline Site, and operates the AGI at the western end of the Existing Gas Pipeline (where NGG also has interests);
- Optimus Wind Limited / Hornsea 1 Limited – both of these entities have beneficial interests in various parcels of land within which Existing Gas Pipeline sits, relating to a proposed underground electrical cable;
- Uniper Gas UK Ltd – Uniper has a high pressure gas pipeline which crosses a section of the Existing Gas Pipeline Site;
- Air Products (BR) Ltd – Air Products owns underground pipelines which cross the Existing Gas Pipeline Site at various points;
- Humber Oil Terminals Trustee Limited – Humber Oil owns over-ground pipes which cross a section of the Existing Gas Pipeline Site;
- Virgin Media – a Virgin underground cable crosses the Existing Gas Pipeline Site;
- Cornerstone Telecommunications Infrastructure Limited – Cornerstone has an NTL tower and associated apparatus at two locations within the Existing Gas Pipeline Site;
- British Pipeline Agency Limited – BPA owns a pipeline and associated apparatus located within the Existing Gas Pipeline Site;
- ConocoPhillips (UK) Limited – ConocoPhillips owns an underground pipeline located within a section of the Existing Gas Pipeline Site; and

- Arqiva Limited – Arqiva has a tower and associated apparatus at two locations within the Existing Gas Pipeline Site.
- 9.3.3 Not all of the entities listed above fall within the definition of a "statutory undertaker" for the purposes of the PA2008 i.e. they are not "persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator". However, in acknowledgment of the apparatus which they may have and the potential interactions between it and the powers sought in the Draft DCO, VPIB is treating each of those listed above as if it were a statutory undertaker.
- 9.3.4 The Draft DCO (Application Document Ref. 2.1) includes protective provisions in respect of statutory undertakers and other entities (see Articles 29, 30 and 37, and schedule 9) which are affected by the works (i.e. those with land or apparatus within the Order limits), and VPIB is seeking to agree the form of protective provisions with those parties.
- 9.3.5 As VPIB does not propose works within the Existing Gas Pipeline Site, it has not included protective provisions in relation to those parties listed above who only have land or apparatus within that area. Where appropriate VPIB has or is writing to those parties to confirm that VPIB is prepared to enter into an agreement (such as a crossing agreement for other apparatus) to govern the relationship between VPIB and the relevant party.
- 9.3.6 In addition, the Order limits overlap with the order limits of the Able Marine Energy Park Development Consent Order 2014 ('the Able DCO'), promoted by Able Humber Ports Limited. The areas of overlap are solely within Rosper Road, and this land is not (and will not be, after implementation of the Able DCO) therefore operational land of Able Humber Ports Limited. Nevertheless VPIB has included provisions within the Draft DCO (Application Document Ref. 2.1) for the protection of Able Humber Ports Limited, and provisions for the protection of VPIB (via an amendment to the Able DCO). These are to govern the interaction of the respective projects and the powers in each DCO, and are contained in article 41, Part 8 of Schedule 9, and Schedule 13. The provisions are explained in the Explanatory Memorandum (Application Document Ref. 2.2) and the interactions are explained in the Planning Statement (Application Document Ref. 5.3).

## **10. OTHER CONSENTS**

10.1.1 Other consents are required in order for the Proposed Development to be constructed and subsequently operate. Other Consents and Licences (Application Document Ref. 5.2) sets out the additional consents required and when they will be applied for. The key consents are identified below and reference should be made to Other Consents and Licences for the full list and the position as regards the need for and obtaining each consent:

- Electricity Generation Licence;
- Environmental permit;
- Land drainage consent;
- Permit for transport of abnormal loads;
- Building Regulations approval; and
- Connection agreement.

10.1.2 VPIB is not aware of any reason why these (or any other necessary consents) would not be granted, and it therefore anticipates being in a position to implement the Proposed Development shortly after grant of the Order and subject to a final investment decision having been made.



## **11. HUMAN RIGHTS**

11.1.1 The Human Rights Act 1998 incorporated into UK law the European Convention on Human Rights ('the Convention'). The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual.

11.1.2 The following Articles of the Convention are relevant to the Secretary of State's decision as to whether the Order should be made so as to include powers of compulsory acquisition.

### **11.2 Article 1 of the First Protocol to the Convention**

11.2.1 This provides the right of everyone to the peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.

### **11.3 Article 6**

11.3.1 This entitles those affected by the powers sought in the Order to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision making process.

### **11.4 Article 8**

11.4.1 This protects private and family life, home and correspondence. No public authority can interfere with these rights except in accordance with the law, and so far as is necessary in the interest of national security, public safety or the economic well-being of the country.

11.4.2 The Secretary of State, as the decision maker, is under a duty to consider whether the exercise of powers interacts with the rights protected by the Convention.

11.4.3 The Order has the potential to infringe the rights of persons who hold interests in land within the Order limits under Article 1 of the First Protocol. Such an infringement is authorised by law so long as:

- the statutory procedures for making the Order are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the Order; and
- the interference with the convention right is proportionate.

11.4.4 In preparing the Application, VPIB has considered the potential infringement of the Convention rights in consequence of the inclusion of compulsory acquisition powers within the Order. VPI considers that there would be a very significant public benefit arising from the grant of the Order, as set out in previous sections in this Statement and in the Planning Statement (Document Ref. 5.5). The benefits will only be realised if the Order is accompanied by the grant of powers of compulsory acquisition. VPIB considers, on balance, that the significant public benefits outweigh the effects on persons who own interests in relevant land or who may be affected by the Proposed Development.

- 11.4.5 For those affected by expropriation or dispossession, compensation is payable in accordance with the statutory compensation code. The Funding Statement (Application Document Ref. 3.3) confirms the availability of funds to meet these liabilities.
- 11.4.6 In relation to Article 6, there has been opportunity to make representations regarding the preparation of the Application. In accordance with Part 5 of the 2008 Act, VPI has consulted with persons set out in the categories contained in Section 44 of the 2008 Act, which includes owners of land affected and those who may be able to make claims either under Sections 7 and 10 of the Compulsory Purchase Act 1965 in respect of injurious affection or under Part 1 of the Land Compensation Act 1973. The beneficiaries of rights overridden by the exercise of powers in the Order can make claims under Section 10 of the Compulsory Purchase Act 1965.
- 11.4.7 Following acceptance of the Application, 'relevant representations' can be made in response to the notice which VPIB is obliged to give pursuant to Section 56 of the 2008 Act. These are then considered during the examination of the Application by the examining authority, in any written representations procedure which the examining authority decides to hold or at any compulsory purchase hearing held under Section 92 of the 2008 Act. There are further opportunities for affected persons to be involved in the examination process, including submitting detailed written representations, responding to matters raised by the examining authority and at other types of hearings that may be held.
- 11.4.8 Should the Order be made, any person aggrieved may challenge the Order in the High Court if they consider that the grounds for doing so are made out, pursuant to Section 118 of the 2008 Act.
- 11.4.9 In relation to matters of compensation for land to be acquired, affected persons have the right to apply to the Upper Tribunal (Lands Chamber) to determine the compensation payable.
- 11.4.10 For the above reasons, any infringement of the Convention rights of those whose interests are affected by the inclusion in the Order of powers of compulsory acquisition, is proportionate and legitimate and is in accordance with national and European law. For the reasons set out in Section 6 and 7 of this Statement, VPIB considers that there is a compelling case in the public interest for the exercise of such powers of compulsory acquisition.
- 11.4.11 VPIB considers that it would, therefore, be appropriate and proportionate for the Secretary of State to make the Order, including the grant of compulsory acquisition powers.

## 12. FURTHER INFORMATION

### 12.1 Negotiations

12.1.1 Owners and occupiers of property affected by the Order who wish to negotiate a sale or discuss matters of compensation should contact Marvin Seaman of VPIB (on telephone 01469 565811 or by email [marvin.seaman@vpi-i.com](mailto:marvin.seaman@vpi-i.com)).

12.1.2 Provision is made by statute with regard to compensation for the compulsory acquisition of land and the depreciation value of properties. Helpful information is given in the series of booklets published by the Department for Communities and Local Government entitled "Compulsory Purchase and Compensation" listed below:

- Booklet No. 1 - Compulsory Purchase Procedure;
- Booklet No. 2 - Compensation to Business Owners and Occupiers;
- Booklet No. 3 - Compensation to Agricultural Owners and Occupiers;
- Booklet No.4 - Compensation for Residential Owners and Occupiers; and
- Booklet No.5 - Reducing the Adverse Effects of Public Development: Mitigation Works.

12.1.3 Copies of these booklets are obtainable, free of charge, from:

- <https://www.gov.uk/government/collections/compulsory-purchase-system-guidance>

## 13. CONCLUSIONS

- 13.1.1 VPIB submits, for the reasons explained in this Statement, that the inclusion of powers of compulsory acquisition in the Order for the purposes of the Proposed Development meets the conditions of Section 122 of the PA 2008, as well as the considerations in the Guidance.
- 13.1.2 The acquisition of land and rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights, is no more than is reasonably required to facilitate or is incidental to the Proposed Development. Furthermore, the land identified to be subject to compulsory acquisition is no more than is reasonably necessary for that purpose and is proportionate, as is shown in the Order (Application Document Ref. 2.1), the Works Plan (Application Document Ref. 4.4) and other information both in this Statement and in other documents accompanying the Application.
- 13.1.3 The need for the Proposed Development, suitability of the Proposed Development Site and the support for such projects is clearly set out in NPS EN-1, NPS EN-2 and NPS EN-4. These demonstrate that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 13.1.4 All reasonable alternatives to compulsory acquisition have been explored. Given the national and local need for the Proposed Development and the support for it found in policy, as well as the suitability of the Order Land (for the reasons outlined above), compulsory acquisition of the land and rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights is justified.
- 13.1.5 The proposed interference with the rights of those with an interest in the Order Land is for a legitimate purpose, namely the Proposed Development, and is necessary and proportionate to that purpose. VPIB considers that the very substantial public benefits to be derived from the proposed compulsory acquisition would decisively outweigh the private loss that would be suffered by those whose land or interests are to be acquired, and therefore justifies interfering with that land or rights.
- 13.1.6 VPIB has set out clear and specific proposals for how the Proposed Development Site will be used.
- 13.1.7 The requisite funds are available to meet any costs of land acquisition and compensation payable as a result of the use of powers of compulsory acquisition.